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SECOND UNITED NATIONS CONFERENCE TO REVIEW ALL ASPECTS
OF THE SET OF MULTILATERALLY AGREED EQUITABLE
PRINCIPLES AND RULES FOR THE CONTROL OF
RESTRICTIVE BUSINESS PRACTICES

Geneva, 26 November 1990
Items 4 and 5 of the provisional agenda

ADOPTION OF THE AGENDA AND ORGANIZATION OF THE WORK OF THE CONFERENCE

Annoted provisional agenda and organization of work

Note by the UNCTAD secretariat

I. PROVISIONAL AGENDA

1. Opening of the Conference
2. Election of the President
3. Adoption of the rules of procedure
4. Adoption of the agenda
5. Organization of the work of the Conference
6. Election of other officers
7. Credentials: (a) Appointment of a Credentials Committee;
   (b) Report of the Credentials Committee
8. Review of all aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices :
   (a) Review of ten years of application and implementation of the Set;
   (b) Consideration of proposals for the improvement and further development of the Set, including international co-operation in the field of control of restrictive business practices
9. Other business
10. Adoption of proposals for the improvement and further development of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, including international co-operation in the field of control of restrictive business practices
11. Adoption of the report of the Conference.

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II. ANNOTATIONS

1. The General Assembly, in its resolution 41/167, decided to convene, in 1990, under the auspices of UNCTAD, a United Nations Conference to Review all Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, and also decided that the Intergovernmental Group of Experts on Restrictive Business Practices, at its annual session in 1990, shall serve as the preparatory body for that Conference. The report of the Intergovernmental Group on its ninth session, which took place from 23 to 27 April 1990, is contained in TD/B/1261-TD/B/RBP/76.

Item 1 - Opening of the Conference

2. The Conference will be opened at 3 p.m. on Monday, 26 November 1990, by the Secretary-General of UNCTAD.

Items 2 and 6 - Election of the President and election of other officers

3. The provisional rules of procedure of the Conference (TD/RBP/CONF.3/2) provide in rule 7 that the Conference shall elect, with due regard to equitable geographical distribution, a President and a Rapporteur and 17 Vice-Presidents from among the participating States. The President, the 17 Vice-Presidents and the Rapporteur shall constitute the Bureau of the Conference.

4. In line with past practice, the Bureau should have the following regional distribution: Group of 77: 9; Group B: 6; Group D: 3; and China: 1.

Item 3 - Adoption of the rules of procedure

5. The provisional rules of procedures, adopted by the Intergovernmental Group of Experts on Restrictive Business Practices at its ninth session, are contained in TD/RBP/CONF.3/2. (see annex I, para 3(ii) of the report of the ninth session, TD/B/1261-TD/B/RBP/76).

Item 4 - Adoption of the agenda

6. The text of the provisional agenda, as set out in section I above, was approved by the Intergovernmental Group of Experts on Restrictive Business Practices at its ninth session (see annex I, para.3(i) and annex II of TD/B/1261- TD/B/RBP/76).

Item 5 - Organization of the work of the Conference

(a) Negotiating Group and subsidiary bodies

7. Rule 44 of the provisional rules of procedure of the Conference provides that the Conference shall establish a Negotiating Group and that it may establish such other subsidiary bodies as it deems necessary. Rule 45 states that the President of the Conference shall perform the function of Chairman of the Negotiating Group and that other subsidiary bodies shall elect their own officers as may be required.

(b) Regional group meetings

8. Appropriate time and facilities shall be made available daily throughout the duration of the Conference for regional group meetings.

(c) Facilities available

9. There will be interpretation facilities available for up to two simultaneous meetings from 10 a.m. to 1 p.m. in the mornings and from 3 p.m. to 6 p.m. in the afternoons throughout the duration of the Conference.

(d) Work of the Conference and the Negotiating Group

10. The Conference has available to it 10 working days. It is suggested that the first meeting, on 26 November, be devoted to procedural matters, namely items 1 to 7 (a) of the provisional agenda, and that the last meeting, on 7 December, be devoted to items 7 (b) "Report of the Credentials Committee", 9 "Other business", 10 "Adoption of proposals for the improvement and further development of the Set ... ", and 11 "Adoption of the report of the Conference". The afternoon of 6 December would need to be kept free for the preparation of the draft report. The remaining meetings (i.e. from 27 November through to the morning of 6 December would be devoted to the substantive item on the agenda (item 8). In this connection, it is suggested that the first three meetings of the Conference be devoted to item 8 (a) "Review of ten years of application and implementation of the Set", and that the remaining meetings, in particular in the Negotiating Group, be devoted to item 8 (b) "Consideration of proposals for the improvement and further development of the Set, including international co-operation in the field of control of restrictive business practices".

Item 7 - Credentials

11. Rule 5 of the provisional rules of procedure provides that a Credentials Committee of 9 members shall be appointed at the beginning of the Conference. Its composition shall be based on that of the Credentials Committee of the General Assembly of the United Nations . At the time of the Conference the General Assembly will be holding its forth-fifth session.

Item 8 - Review of all Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices

(a) Review of ten years of application and implementation of the Set

12. In acting as preparatory body for the Review Conference, the Intergovernmental Group of Experts on Restrictive Business Practices, at its ninth session, had before it a note by the UNCTAD secretariat (TD/B/RBP/69) containing, inter alia, a broad assessment of the application and implementation of the Set in the ten years since its adoption. This note will be made available as background documentation for the Conference. In addition, Governments may wish to present their views on the implementation of the Set under this agenda item.

(b) Consideration of proposals for the improvement and further development of the Set, including international co-operation in the field of control of restrictive business practices

13. The Intergovernmental Group of Experts on Restrictive Business Practices at its ninth session had a full exchange of views on proposals by regional Groups and individual States, and agreed to recommend that the Review Conference consider these proposals, on the basis of the draft decision of the Group of 77, as contained in annex III of the report of the Intergovernmental Group on its ninth session, and the draft recommendations of Group B, as contained in annex IV of that report (TD/B/1261-TD/B/RBP/76).

14. Moreover, the Intergovernmental Group of Experts on Restrictive Business Practices at its ninth session requested the UNCTAD secretariat to prepare, for the use of the Conference :

(a) A report containing detailed proposals for enhancing the implementation of the provisions of the Set so as to ensure transparency in matters of restrictive business practices, including a compilation of the different categories of publicly available information concerning RBPs already existing in member countries, and a list of the respective RBP control authorities and channels through which such information is obtainable;

(b) With a view to contributing to the implementation of the agreement reached under paragraph 105 (18) of the Final Act of UNCTAD VII, a report containing detailed proposals for the definition of consultation procedures, including the identification of elements that might assist member States, especially the developing countries, to address requests for information and co-operation concerning RBP control to other States, and to enter into and hold consultations on RBP control issues in accordance with the provisions of the Set; and

(c) So that the Conference can make an accurate assessment of requirements in this respect, a report on technical assistance on RBP control issues in order to ensure the efficient use of resources, which should include:

(i) A descriptive review of technical assistance already carried out, its contribution to the control of RBPs and its costs, specified on an individual programme basis;

(ii) A list of the requests for technical assistance made so far, and

(iii) Based on the foregoing, proposals for a framework for a technical assistance programme that in the secretariat's view is needed with regard to RBP control.

15. The reports prepared by the UNCTAD secretariat on the above subjects are contained in TD/RBP/CONF.3/3 relating to the issues of transparency and consultation procedures; and TD/RBP/CONF.3/4 relating to technical assistance, advisory and training programmes on restrictive business practices.

Item 9 - Other business

Item 10 - Adoption of proposals for the improvement and further development of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, including international co-operation in the field of control of restrictive business practices

16. Rule 52 of the provisional rules of procedure indicates that the Conference may recommend to the General Assembly the adoption of amendments to the Set of Principles and Rules. Rule 52 also provides that the Conference may approve a Final Act.

Item 11 - Adoption of the report of the Conference

17. Rule 52 of the provisional rules of procedure provides that the Conference shall adopt a report on its proceedings.

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SECOND UNITED NATIONS CONFERENCE TO REVIEW ALL ASPECTS OF THE SET OF MULTILATERALLY AGREED EQUITABLE PRINCIPLES AND RULES FOR THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES
Geneva, 26 November 1990
Item 3 of the provisional agenda

ADOPTION OF THE RULES OF PROCEDURE

Provisional rules of procedure of the Conference

The following sets out the text of the provisional rules of procedure adopted on 27 April 1990 by the Intergovernmental Group of Experts on Restrictive Business Practices at its ninth session.

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DRAFT PROVISIONAL RULES OF PROCEDURE OF THE CONFERENCE

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DRAFT PROVISIONAL RULES OF PROCEDURE OF THE CONFERENCE

Chapter I

REPRESENTATION AND CREDENTIALS

Participation

Rule 1

Participation in the Conference shall be open to:

(a) All States;

(b) Regional groupings of States which have competence in the area of restrictive business practices and have accepted the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices; */ and

(c) Other participants and observers referred to in operative paragraph 4 of General Assembly resolution 33/153 of 20 December 1978.

Composition of delegations

Rule 2

Each delegation participating in the Conference shall consist of a head of delegation, and not more than two other accredited representatives, and such alternate representatives and advisers as may be required.

Alternates and advisers

Rule 3

The head of the delegation may designate an alternate representative or an adviser to act as a representative.

Submission of credentials

Rule 4

The credentials of representatives of States and the names of alternate representatives and advisers shall be submitted to the Secretary-General of UNCTAD, if possible not later than one week before the date fixed for the opening of the Conference. Any later change in the composition of delegations shall also be submitted to the Secretary-General of UNCTAD. The credentials shall be issued by the Head of State or Government or by the Minister for

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*/ Reference to regional groupings of States in this rule is based on the definition contained in section B, paragraph 8, of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices. The draft rule does not confer on such regional groupings the right to vote.

Foreign Affairs or by the Permanent Mission to the United Nations of the State at Geneva upon the explicit authorization of the Head of State or Government or the Minister for Foreign Affairs.

Credentials Committee

Rule 5

A Credentials Committee of nine members shall be appointed at the beginning of the Conference. Its composition shall be based on that of the Credentials Committee of the General Assembly of the United Nations at its forty-fifth regular session. It shall examine the credentials of representatives and report to the Conference without delay.

Provisional participation in the Conference

Rule 6

Pending a decision of the Conference upon their credentials, representatives shall be entitled to participate provisionally in the Conference.

Chapter II

OFFICERS

Elections

Rule 7

1. The Conference shall elect, with due regard to equitable geographical distribution:

(a) From among the representatives of participating States, the following officers: a President and a Rapporteur.

(b) From among the participating States: 17 Vice-Presidents.

2. The President, the 17 Vice-Presidents and the Rapporteur shall constitute the Bureau of the Conference.

Term of office and replacement

Rule 8

1. Should the Conference hold more than one session, and unless the Conference decides otherwise, all officers shall serve for all sessions of the Conference.

2. If an officer resigns or ceases to be able to perform his functions or to be a representative of a participating State, the Conference shall, as soon as possible, elect a new officer. If the office thus vacated is that of the

President, the other officers which constitute the Bureau shall select one of the Vice-Presidents to serve as Acting President until the new President has been elected.

Absence of the President

Rule 9

1. If the President is to be absent from a meeting or any part thereof, he shall designate a Vice-President to take his place.

2. A Vice-President acting as President shall have the same powers and duties as the President.

Voting rights of the President

Rule 10

The President, or a Vice-President acting as President, shall not vote in the Conference, but may designate another member of his delegation to vote in his place.

Temporary President

Rule 11

At the opening of the Conference, the Secretary-General of UNCTAD or a member of the secretariat designated by him shall preside until the Conference has elected its President.

Chapter III

SECRETARIAT

Direction by the Secretary-General of UNCTAD

Rule 12

On behalf of the Secretary-General of the United Nations, the Secretary-General of UNCTAD shall be responsible for all arrangements necessary for the carrying out of the work of the Conference. For that purpose he shall appoint such staff as may be required. The Secretary of the Conference shall act in that capacity at all meetings and shall be responsible for making all arrangements connected with such meetings.

Administrative duties of the secretariat of the Conference

Rule 13

The secretariat of the Conference shall, in accordance with these rules and any pertinent directives of the General Assembly:

(a) Interpret speeches made at meetings;

(b) Make and arrange for the keeping of sound recordings of meetings;

(c) Receive, translate and circulate the documents of the Conference;

(d) Report the proceedings of the Conference in appropriate journals;

(e) Publish and circulate any report or final act of the Conference;

(f) Arrange for the custody of the documents and records of the Conference in the archives of the United Nations;

(g) Generally perform all other work that the Conference may require in connection with its proceedings.

Statements by the secretariat

Rule 14

The Secretary-General of the United Nations or the Secretary-General of UNCTAD, or any member of the secretariat designated by either of them for that purpose, may, subject to rule 17, make either oral or written statements concerning any question under consideration.

Chapter IV

CONDUCT OF BUSINESS

Quorum

Rule 15

The President may declare a meeting open and permit the debate to proceed when representatives of at least one-third of the States participating in the Conference are present. The presence of representatives of a majority of the States so participating shall be required for any decision to be taken.

General powers of the President

Rule 16

1. In addition to exercising the powers conferred upon him elsewhere by these rules, the President shall preside at the plenary meetings of the Conference, declare the opening and closing of each such meeting, direct the discussions, ensure observance of these rules, accord the right to speak, put questions to the vote and announce decisions. The President shall rule on points of order and, subject to these rules, have complete control of the proceedings and over the maintenance of order thereat. The President may propose to the Conference the closure of the list of speakers, a limitation on the time to be allowed to speakers, and on the number of times each representative may speak on a question, the adjournment or the closure of the debate, and the suspension or the adjournment of a meeting.

2. The President, in the exercise of his functions, shall remain under the authority of the Conference.

Speeches

Rule 17

1. No one may address the Conference without having previously obtained the permission of the President. Subject to rules 18, 19 and 22 to 24, the President shall call upon speakers in the order in which they signify their desire to speak.

2. All interventions shall be confined to the question before the Conference and the President may call a speaker to order if his remarks are not relevant to the subject under discussion.

3. The Conference may limit the time allowed to speakers and the number of times the representatives of each participant may speak on a question. Permission to speak on a motion to set such limits shall be accorded only to two representatives in favour of and to two opposing such limits, after which the motion shall be immediately put to the vote. In any event, the limitations specified in rule 21 shall be observed, and the President shall limit each intervention on a procedural question to a maximum of five minutes. When the debate is limited and a speaker exceeds the allocated time, the President shall call the speaker to order without delay.

Precedence

Rule 18

The Chairman or the presiding officer of a subsidiary body may be accorded precedence for the purpose of explaining the conclusions arrived at by that subsidiary body.

Points of order

Rule 19

Subject to rule 36, a representative may at any time raise a point of order, which shall be decided immediately by the President in accordance with these rules. A representative may appeal against the ruling of the President. The appeal shall be put to the vote immediately, and the President's ruling shall stand unless overruled by a majority of the representatives present and voting. A representative may not, in raising a point of order, speak on the substance of the matter under discussion.

Closing of list of speakers

Rule 20

During the course of a debate, the President may announce the list of speakers and, with the consent of the Conference, declare the list closed.

When there are no more speakers, the President shall, with the consent of the Conference, declare the debate closed. Such closure shall have the same effect as closure pursuant to rule 23.

Right of reply

Rule 21

1. Notwithstanding rule 20, the President shall accord the right of reply to the delegation of any State participating in the Conference that requests it. Other delegations may be granted the opportunity to make a reply.

2. Replies made pursuant to the present rule:

(a) Shall be made at the end of the last meeting of the day, or at the conclusion of the consideration of the relevant item if that is sooner;

(b) Shall be limited to two per item for any delegation at a given meeting, the first of which is not to exceed five minutes and the second three minutes.

Adjournment of debate

Rule 22

A representative may at any time move a motion for the adjournment of the debate on the question under discussion. Permission to speak on the motion shall be accorded only to two representatives in favour of and two opposing the adjournment, after which the motion shall, subject to rule 25, be immediately put to the vote.

Closure of debate

Rule 23

A representative may at any time move a motion for the closure of the debate on the question under discussion, whether or not any other representative has signified his wish to speak. Permission to speak on the motion for the closure of the debate shall be accorded only to two speakers opposing the closure, after which the motion shall, subject to rule 25, be immediately put to the vote.

Suspension or adjournment of the meeting

Rule 24

Subject to rule 36, a representative may at any time move a motion for the suspension or the adjournment of the meeting. No discussion on such a motion shall be permitted and it shall, subject to rule 25, be immediately put to the vote.

Order of motions

Rule 25

Subject to rule 19, the motions indicated below shall have precedence in the following order over all proposals or other motions before the Conference:

(a) To suspend the meeting;

(b) To adjourn the meeting;

(c) To adjourn the debate on the question under discussion;

(d) To close the debate on the question under discussion.

Proposals

Rule 26

1. The basic proposals for consideration by the Conference shall be those submitted, pursuant to section G, paragraph 6, of the Set, by the Intergovernmental Group of Experts on Restrictive Business Practices for the improvement and further development of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices.

2. Other proposals shall be those submitted at the Conference, in accordance with rule 27.

Other proposals and substantive amendments

Rule 27

Other proposals and substantive amendments shall normally be submitted in writing to the Secretary of the Conference, who shall circulate copies to all delegations, in the languages of the Conference. Unless the Conference decides otherwise, no substantive proposals shall be discussed or put to the vote at any meeting of the Conference, unless copies of it have been circulated to all delegations not later than the day preceding the meeting.

Decisions on competence

Rule 28

Subject to rule 19, any motion calling for a decision on the competence of the Conference to consider any matter, or to adopt a proposal, or an amendment submitted to it, shall be put to the vote before the matter is considered or a vote is taken on the proposal or amendment in question.

Withdrawal of proposals and motions

Rule 29

A proposal or a motion may be withdrawn by its sponsor, at any time before voting on it has commenced, provided that it has not been amended by decision of the Conference. A proposal or a motion thus withdrawn may be reintroduced by any representative with its original priority, provided he does so promptly and it has not been substantially changed.

Consideration of programme budget implications

Rule 30

Before the Conference takes a decision or makes a recommendation, the implementation of which might have programme budget implications for the United Nations, it shall receive and consider a report from the secretariat on such implications.

Reconsideration of proposals

Rule 31

When a proposal has been adopted or rejected, it may not be reconsidered unless the Conference, by a two-thirds majority of the representatives present and voting, so decides. Permission to speak on the motion to reconsider shall be accorded only to two speakers opposing the motion, after which it shall be put to the vote immediately.

Chapter V

DECISION-MAKING

Consensus

Rule 32

1. The Conference shall endeavour to ensure that all its substantive decisions are taken by consensus.

2. Notwithstanding any measures that may be taken in compliance with paragraph 1, a proposal before the Conference shall be voted on if a representative so requests.

Voting rights

Rule 33

Each State participating in the Conference shall have one vote.

Majority required

Rule 34

1. Subject to paragraph 1 of rule 32, decisions of the Conference on all matters of substance shall be taken by a two-thirds majority of the representatives present and voting.

2. Decisions of the Conference on matters of procedure shall be taken by a majority of the representatives present and voting.

3. If the question arises whether a matter is one of procedure or of substance, it shall be decided by the Conference by a majority of the representatives present and voting.

4. If the vote is equally divided on a decision requiring a majority of the representatives present and voting, the proposal or motion shall be regarded as rejected.

5. For the purpose of these rules, the phrase "representatives present and voting" means representatives present and casting an affirmative or negative vote. Representatives who abstain from voting shall be considered as not voting.

Method of voting

Rule 35

1. Except as provided in rule 42, the Conference shall normally vote by show of hands, but any representative may request a roll-call, which shall then be taken in the French alphabetical order of the names of the States participating in the Conference, beginning with the delegation whose name is drawn by lot by the President. The name of each such State shall be called in all roll-calls, and its representative shall reply "yes", "no" or "abstention".

2. The vote of each State participating in a roll-call shall be inserted in any record of or report of the Conference.

Conduct during voting

Rule 36

After the President has announced the commencement of a vote, the voting shall not be interrupted until the result of the vote has been announced, except on a point of order in connection with the process of voting.

Explanation of vote or position

Rule 37

1. Representatives may make brief statements consisting solely of explanations of vote, before the voting has commenced, or after the voting has

been completed. The President may limit the time to be allowed for such explanations. The representative of a State sponsoring a proposal or motion shall not speak in explanation of vote thereon, unless it has been amended.

2. When the same matter is considered successively in several organs of the Conference, the representatives of States should, as far as possible, explain their votes in one such organ, unless these votes differ.

3. Similarly, explanatory statements of position may be made in connection with a decision taken without a vote.

Division of proposals

Rule 38

A representative may move that parts of a proposal shall be voted on separately. If a representative objects, the motion for division shall be voted upon. Permission to speak on the motion shall be accorded only to two representatives in favour of and two opposing the division. If the motion for division is carried, those parts of the proposal which are subsequently approved shall be put to the vote as a whole. If all operative parts of the proposal have been rejected, the proposal shall be considered to have been rejected as a whole.

Amendments

Rule 39

A proposal is considered an amendment to another proposal if it merely adds to, deletes from or revises part of that proposal. Unless specified otherwise, the word "proposal" in these rules shall be considered as including amendments.

Order of voting on amendments

Rule 40

1. When an amendment is moved to a proposal, the amendment shall be voted on first. When two or more amendments are moved to a proposal, the Conference shall vote first on the amendment furthest removed in substance from the original proposal and then on the amendment next furthest removed therefrom, and so on, until all the amendments have been put to the vote. Where, however, the adoption of one amendment necessarily implies the rejection of another amendment, the latter amendment shall not be put to the vote. If one or more amendments are adopted, the amended proposal shall then be voted upon.

2. When the Conference decides, in accordance with rule 38, to consider an extensive text in convenient portions (such as paragraphs or articles), each of these shall be treated as a separate proposal for the purpose of paragraph 1.

Order of voting on proposals

Rule 41

1. If two or more proposals, other than amendments, relate to the same question, they shall, unless the Conference decides otherwise, be voted on in the order in which they were submitted. The Conference may, after each vote on a proposal, decide whether to vote on the next proposal.

2. Revised proposals shall be voted on in the order in which the original proposals were submitted, unless the revision substantially departs from the original proposal. In that case, the original proposal shall be considered as withdrawn and the revised proposal shall be treated as a new proposal.

3. A motion requiring that no decision be taken on a proposal shall have priority over that proposal.

Elections

Rule 42

1. All elections shall be held by secret ballot unless, in the absence of any objection, the Conference decides to proceed without taking a ballot on an agreed candidate or slate of candidates.

2. When candidates are to be nominated, each nomination shall be made by only one representative, after which the Conference shall immediately proceed to the election.

Balloting

Rule 43

1. When one or more elective places are to be filled at one time under the same conditions, each delegation entitled to vote may cast a vote for as many candidates as there are places to be filled, and those candidates, in a number not exceeding the number of such places, who obtain in the first ballot a majority of the votes cast and the largest number of votes shall be elected.

2. If the number of candidates so elected is less than the number of places to be filled, additional ballots shall be held to fill the remaining places. From such ballots the candidates obtaining the least number of votes in the previous ballot may be eliminated on the proposal of the President.

Chapter VI

SUBSIDIARY BODIES

Negotiating Group and subsidiary bodies

Rule 44

1. The Conference shall establish a Negotiating Group.

2. The Conference may establish such other subsidiary bodies as it deems necessary.

Officers

Rule 45

The President of the Conference, in addition to the duties described elsewhere in these rules, shall be the Chairman of the Negotiating Group. Other subsidiary bodies shall elect their own officers as may be required.

Applicable rules

Rule 46

The rules contained in chapters II, III, IV, V and X shall be applicable, mutatis mutandis, to the proceedings of subsidiary bodies, except as these may otherwise provide and except that:

(a) The Chairman of a subsidiary body other than the Negotiating Group may exercise the right to vote;

(b) The Chairman of the Negotiating Group or of another subsidiary body may declare a meeting open and permit the debate to proceed when representatives of at least one quarter of the States participating in the Conference are present. The Chairman of any subsidiary body of limited membership may do so when representatives of a majority of its members are present. The presence of representatives of a majority of the States so participating shall be required for any decision to be taken.

(c) Decisions of subsidiary bodies shall be taken by a majority of the representatives present and voting.

Chapter VII

LANGUAGES

Languages of the Conference

Rule 47

Arabic, Chinese, English, French, Russian and Spanish shall be the languages of the Conference.

Interpretation

Rule 48

1. Speeches made in a language of the Conference shall be interpreted into the other languages of the Conference.

2. A representative may speak in a language other than a language of the Conference. In this case the delegation concerned shall provide for interpretation into one of the languages of the Conference. Interpretation into the other languages of the Conference by the interpreters of the secretariat may be based on the interpretation given in the first such language.

Languages of official documents

Rule 49

Official documents shall be made available in the languages of the Conference.

Chapter VIII

RECORDS AND REPORTS

Records of meetings

Rule 50

1. There shall be neither verbatim nor summary records of meetings.

2. Statements made at the Conference shall not be reproduced in extenso either as separate documents or as an integral part of or attached to any report of a subsidiary body or of the Conference, unless, in exceptional cases, they are of a technical nature and served or are to serve as bases for discussion, and a decision to reproduce them has been taken by the Conference or the body concerned.

Sound recordings

Rule 51

Sound recordings of plenary meetings of the Conference, of the meetings of the Negotiating Group and of any other subsidiary bodies, as appropriate, shall be made and kept in accordance with the practice of the United Nations.

Report or Final Act of the Conference

Rule 52

1. The Conference may recommend to the General Assembly the adoption of amendments to the Set of Principles and Rules. The Conference may approve a Final Act. The Conference shall, subject to the provisions of rule 50,

paragraph 2, adopt a report on its proceedings. The draft of such report shall be prepared by the Rapporteur of the Conference, who may be assisted by "friends" designated by regional groups.

2. The draft of any Final Act shall be prepared by the secretariat and submitted by it, through the President, to the Conference.

Chapter IX

PUBLIC AND PRIVATE MEETINGS

Plenary

Rule 53

The plenary meetings of the Conference shall be held in public unless the Conference decides otherwise.

Subsidiary bodies

Rule 54

Meetings of subsidiary bodies shall be held in private, unless the Conference or the subsidiary body concerned decides otherwise.

Communiqués on private meetings

Rule 55

At the close of a private meeting, the Conference or the subsidiary body concerned may issue a comuniqué to the press through the secretariat of the Conference.

Chapter X

OTHER PARTICIPANTS AND OBSERVERS

Representatives of organizations that have received a standing invitation from the General Assembly to participate in the capacity of observers in the sessions and work of all international conferences convened under its auspices

Rule 56

Representatives designated by organizations that have received a standing invitation from the General Assembly to participate in the sessions and work of all international conferences convened under its auspices have the right to participate as observers, without the right to vote, in the deliberations of the Conference, and, as appropriate, its subsidiary bodies.

Representatives of national liberation movements

Rule 57

Representatives designated by national liberation movements invited to the Conference may participate as observers, without the right to vote, in the deliberations of the Conference and, as appropriate, its subsidiary bodies, on any matter of particular concern to those movements.

Representatives of the specialized and related agencies */

Rule 58

Representatives designated by the specialized and related agencies may participate as observers, without the right to vote, in the deliberations of the Conference and, as appropriate, its subsidiary bodies, on questions within the scope of their activities.

Representatives of other intergovernmental organizations

Rule 59

Representatives designated by other intergovernmental organizations invited to the Conference, may participate as observers, without the right to vote, in the deliberations of the Conference and, as appropriate, its subsidiary bodies, on questions within the scope of their activities.

Representatives of interested United Nations organs

Rule 60

Representatives designated by interested organs of the United Nations may participate as observers, without the right to vote, in the deliberations of the Conference and, as appropriate, its subsidiary bodies, on questions within the scope of their activities.

Representatives of non-governmental organizations

Rule 61

1. Non-governmental organizations invited to the Conference may designate representatives to sit as observers at public meetings of the Conference.

2. Upon the invitation of the presiding officer of the Conference body concerned, and subject to the approval of that body, such observers may make oral statements on questions in which they have a special competence.

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*/ Related agencies means other organizations that have a relationship agreement or an established relationship with the United Nations, such as the International Atomic Energy Agency, the World Tourism Organization and the General Agreement on Tariffs and Trade.

Written statements

Rule 62

Written statements related to the work of the Conference, submitted by the designated representatives or observers referred to in rules 56 to 61, shall be distributed by the secretariat to all delegations in the quantities and in the languages in which the statements are made available to the secretariat for distribution, provided that a statement submitted on behalf of a non-governmental organization is on a subject in which it has a special competence and is related to the work of the Conference.

Chapter XI

AMENDMENT AND SUSPENSION OF THE RULES OF PROCEDURE

Method of amendment

Rule 63

These rules may be amended by a decision of the Conference, taken by a two-thirds majority of the representatives present and voting.

Method of suspension

Rule 64

Any of these rules may be suspended by a decision of the Conference, provided that 24 hours' notice of the proposal for suspension has been given, which may be waived if no representative objects; subsidiary bodies may by unanimous consent waive rules pertaining to them. Any suspension shall be limited to a specific and stated purpose, and to the period required to achieve it.

Other procedural matters

Rule 65

Any procedural matter not covered by these rules shall be settled in accordance with the rules and practices of the General Assembly.

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NATIONS

TD

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SECOND UNITED NATIONS CONFERENCE
TO REVIEW ALL ASPECTS OF THE SET OF MULTILATERALLY
AGREED EQUITABLE PRINCIPLES AND RULES FOR THE
CONTROL OF RESTRICTIVE BUSINESS PRACTICES
Geneva, 26 November 1990
Item 8 of the provisional agenda

REVIEW OF ALL ASPECTS OF THE SET OF MULTILATERALLY AGREED EQUITABLE PRINCIPLES AND RULES FOR THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES

Proposals on transparency and consultation procedures in the field of restrictive business practices

Report by the UNCTAD secretariat

GE.90-52283/2431B

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SURVEY OF THE QUALITY AND USEFULNESS OF UNCTAD PUBLICATIONS AND OF THEIR END-USERS

The UNCTAD secretariat, in the context of its programme evaluation activities and in response to intergovernmental requests, is seeking the opinions of end-users in order to have basic data for assessing the quality, usefulness and effectiveness of *inter alia* its research reports and publications. As the success of such an exercise is critically dependent on an adequate rate of response we should appreciate it if you would take time to answer the questions below and submit any other comments that you may have concerning the current document.

1. **Title or symbol number of document** . . . . . .

2. **When did you receive the document?** . . . . . .

3. **How did you receive the document?** *(tick one or more boxes)*

Through Permanent Mission to United Nations	( )	From UN bookshop	( )
From ministry or government office	( )	From university libraries	( )
Directly from UNCTAD secretariat	( )	Own request	( )
By participating in an UN/UNCTAD intergovernmental meeting	( )	UNCTAD initiative	( )
		Other (please specify)	. . . . .
By participating in an UN/UNCTAD sponsored training course or seminar	( )	. . . . .	
		. . . . .	

4. **For what main purposes do you use the document?** *(tick one or more boxes)*

Policy formulation	( )	Education and training	( )
Analysis and research	( )	Management	( )
Legislation	( )	Other (please specify)	. . . . .
Background information	( )	. . . . .	

5. **How do you rate the document as regards:**

Its usefulness to your work *(tick one box)*

Extremely useful ( ); Very useful ( ); Useful ( ); Marginally useful ( ); Not at all ( ).

Its quality, in terms of the following aspects *(tick one box in each case)*:

	Outstanding	*Excellent*	*Good*	*Adequate*	*Poor*
Presentation and readability	( )	( )	( )	( )	( )
Originality of ideas	( )	( )	( )	( )	( )
Wealth of information	( )	( )	( )	( )	( )
Up-to-date information	( )	( )	( )	( )	( )
Technical accuracy	( )	( )	( )	( )	( )
Quality of analysis, including objectivity	( )	( )	( )	( )	( )
Validity of conclusions	( )	( )	( )	( )	( )
Clarity of recommendations	( )	( )	( )	( )	( )
Comprehensiveness of coverage	( )	( )	( )	( )	( )

6. **Other observations** *(if any)* . . . . . .

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Finally, we would appreciate it if you could provide the following information about yourself:

Name . . . . . .Occupation/Functional title . . . . . .

Address . . . . . .

Your answers are for internal use and will be kept confidential. Thank you for your co-operation.

Please forward the questionnaire to : PROGRAMME CO-ORDINATION AND EVALUATION UNIT
EXECUTIVE DIRECTION AND MANAGEMENT
UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT
PALAIS DES NATIONS – CH-1211 GENEVA 10

INTRODUCTION AND SUMMARY

1. The Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices 1/ contains many provisions dealing with the supply and dissemination of information useful or necessary for the effective control of restrictive business practices. It also contains a provision dealing with consultations among States (section F, prov. 4). Concern about the weak implementation of these provisions dealing with information and consultation procedures prompted UNCTAD VII, in its Final Act, paragraph 105 (18), to agree that the ongoing work in UNCTAD in respect of restrictive business practices should continue and be strengthened, particularly with a view to ensuring transparency and defining consultation procedures.

2. The first analysis of these two elements is contained in the "Comprehensive review of the implementation of the Set" (TD/B/RBP/69), prepared by the UNCTAD secretariat for the ninth session of the Intergovernmental Group of Experts on Restrictive Business Practices, which acted as the preparatory body for the Review Conference.

3. After conducting a full exchange of views on various proposals for improving the implementation of the Set, the Intergovernmental Group of Experts agreed to recommend that the Review Conference consider these proposals on the basis of the draft decision of the Group of 77, as contained in document TD/B/RBP/L.50, and the draft recommendations of Group B, as contained in document TD/B/RBP/L.51. Both documents are reproduced in annexes III and IV, respectively, of the report on the ninth session of the Expert Group (TD/B/1261 - TD/B/RBP/76).

4. The Intergovernmental Group of Experts also requested the UNCTAD secretariat to prepare, for the use of the Review Conference:

(a) A report containing detailed proposals for enhancing the implementation of the provisions of the Set so as to ensure transparency in matters of restrictive business practices, including a compilation of the different categories of publicly available information concerning restrictive business practices already existing in member countries, and a list of the respective restrictive business practices control authorities and channels through which such information is obtainable;

(b) With a view to contributing to the implementation of the agreement reached under paragraph 105 (18) of the Final Act of UNCTAD VII, a report containing detailed proposals for the definition of consultation procedures, including the identification of elements that might assist member States, especially the developing countries, to address requests for information and co-operation concerning restrictive business practices control to other States, to enter into and hold consultations on restrictive business practices control issues in accordance with the provisions of the Set.

5. Accordingly, the present report contains two substantive chapters, dealing respectively with proposals for enhancing the implementation of the provisions of the Set so as to ensure transparency in matters of restrictive business practices, and detailed proposals for the definition of consultation procedures.

6. After an analysis of the relevant provisions of the Set dealing with transparency and consultation procedures, and after consideration of the application of existing instruments in other fora (OECD and bilateral agreements) which provide for the exchange of information and the holding of consultations on issues related to restrictive business practices, it is proposed that three instruments should be established to improve the implementation of the Set as regards transparency and to facilitate the use of consultation procedures:

1. A regularly updated list of authorities/persons in member States empowered to lodge and receive requests for consultations, indicating name, title, address, telephone, telex and telefax numbers. This need is partly fulfilled in sections I.B and I.C of this report (see also para. 75).

2. A form for requesting information and/or consultations to be used by States seeking such information or consultations or both from another State, making it possible for the major concerns to be expressed in detail, thereby facilitating the use of both provisions E.9 and F.4 in the procedures (see paras. 32 and 77 of this report).

3. A detailed questionnaire to be answered annually by States with a view to collecting information required under sections F.2 and F.3, making possible an assessment of the implementation of the Set and providing a factual basis for considering possible improvements at a later stage (see paras. 16, 30, 36 and 72 of this report).

7. Once restrictive business practices have been identified, countries concerned should be willing to hold consultations, and results should be publicized, as provided in section F.4 of the Set. This would encourage other States to engage in consultations to settle similar or related RBP cases. Where consultations have not provided satisfactory results, a further conciliation procedure could be envisaged, e.g. through the setting up of appropriate panels.

Chapter I

PROPOSALS FOR ENHANCING THE IMPLEMENTATION OF THE PROVISIONS OF THE SET SO AS TO ENSURE TRANSPARENCY IN MATTERS OF RESTRICTIVE BUSINESS PRACTICES

8. In dealing with transparency, it should be noted at the outset that the provisions of the Set deal with four types of information, which all constitute an element of transparency. First, transparency consists in making available reliable information concerning laws and regulations dealing with restrictive business practices. This is the sense of the last sentence of provision 3 in section E, which states that "the laws and regulations should be publicly and readily available".

9. A second element of transparency is that provided by information about investigations undertaken in one country which might affect other countries, where the enterprises being investigated operate or originate from. Paragraph 5 of section E stipulates in this case that "where, for the purposes of the control of restrictive business practices, a State obtains information from enterprises containing legitimate business secrets, it should accord such information reasonable safeguards normally applicable in this field, particularly to protect its confidentiality".

10. Thirdly, there is information which is known in one State about restrictive business practices adversely affecting, or which could adversely affect, another State or other States, and which would be useful for that other State or States to know. Provision 9 of section E, in particular, provides that "States should, on request, or at their own initiative when the need comes to their attention, supply to other States, particularly developing countries, publicly available information, and, to the extent consistent with their laws and established public policy, other information necessary to the receiving interested State for its effective control of restrictive business practices".

11. Moreover, the question that may arise concerning the implementation of provision 4 of section E, namely that "States should seek appropriate remedial or preventive measures to prevent and/or control the use of restrictive business practices within their competence when it comes to the attention of States that such practices adversely affect international trade, and particularly the trade and development of the developing countries", is whether the obvious remedial or preventive measure is not to make available necessary information about restrictive business practices when it comes to the attention of States that such practices adversely affect other countries. A further step in this respect, which was suggested by the developing countries in their proposals made known during the seventh session of the Intergovernmental Group of Experts, is whether the expression "when it comes to their attention" might not be taken in the sense to mean that "States and, in particular, those developed countries which already collect such information on a discrete basis, should agree to open their registries to foreign trade partners wishing to deal with the domestic enterprises in question". 2/

12. Of course, in such a case those States which do not collect such information, for example concerning export cartels, would be advantaged. An agreement in this respect could only be conceivable if all States agreed to collect the same types of information.

13. Fourthly, there is simply information which enterprises are requested to provide to States in which they operate, and this is the subject of provision 2 of section D and provision 6 of section E, which are further discussed below.

A. Analysis of the relevant provisions in the Set

14. Beyond the general principle that "appropriate mechanisms should be devised at the international level and/or the use of existing international machinery improved to facilitate exchange and dissemination of information among Governments with respect to restrictive business practices", as laid down in provision 3 of section C, the Set contains a number of provisions in sections D, E and F which are relevant to the issue of transparency. While some of these provisions would not seem to require particular consideration in this report, the following paragraphs will review the provisions in order to elaborate detailed proposals aimed at facilitating or improving their implementation, or at least providing the basis for considerations which would allow improved implementation at a later stage.

15. Provision 2 of section D provides that:

> "Enterprises should consult and co-operate with competent authorities of countries directly affected in controlling restrictive business practices adversely affecting the interests of those countries. In this regard, enterprises should also provide information, in particular details of restrictive arrangements, required for this purpose, including that which may be located in foreign countries, to the extent that in the latter event such production or disclosure is not prevented by applicable law or established public policy. Whenever the provision of information is on a voluntary basis, its provision should be in accordance with safeguards normally applicable in this field."

16. As noted already in chapter II of the Comprehensive Review (TD/B/RBP/69, para. 63), the effectiveness of implementation of the rules contained in the second and third sentences of this provision cannot be adequately assessed on the basis of presently available information. As their implementation depends upon the initiative of States, countries should be invited to inform the UNCTAD secretariat about the implementation of this provision of the Set, and in particular the reasons of its non-implementation, if such were the case. A questionnaire could be sent out to States requesting information on cases where enterprises have refused to comply with this provision, and on what basis. Concerning information located abroad, it would be necessary to analyse cases where information was refused: which countries were involved, what the sector was in which the enterprise(s) operated, and on what legal basis did the enterprise(s) refuse to supply information.

17. Information is also indispensable about the reaction of the enterprise(s) concerned, i.e. did the enterprise concerned reply; did it provide the information requested fully, in part, or not at all; and what, if any, were the reasons given by the enterprise for not or not fully complying with the request. Similarly indispensable is information about the absolute number of successful, partly successful and unsuccessful requests for information. Furthermore, information is required on cases in which States were contemplating using these rules but refrained from doing so, and on the reasons invoked.

18. Based on such detailed information, proposals could be made regarding improvement of the implementation of the rules contained in provision D.2.

19. While it should not be too difficult for States to obtain information from enterprises operating inside their borders, difficulties might become much more acute when the information sought is located abroad. In this respect, the existence of so-called "blocking statutes", whereby certain States prohibit the disclosure of information by enterprises situated within their jurisdiction when such information is to be used by foreign courts, is no doubt a limitation on the extent to which provision D.2 can be implemented. Moreover, the wording in the last sentence, in particular with respect to "safeguards normally applicable in this field", is so broad that it can apply to concepts differing widely from one country to another, and this limits even more the applicability of the provision.

20. Provision 6 of section E provides that:

> "States should institute or improve procedures for obtaining information from enterprises, including transnational corporations, necessary for their effective control of restrictive business practices, including in this respect details of restrictive agreements, understandings and other arrangements".

21. This provision, which is closely related to provisions E.1 and E.2 of the Set, implies that States must adopt, improve and effectively enforce appropriate legislation for the control of restrictive business practices.

22. In order to improve the implementation of this rule, two important conditions therefore have to be met:

- States need to have adopted substantive restrictive business practices control legislation, as otherwise there would be little interest in seeking relevant information and no legal basis to obtain it;

- States must be in a position to institute and improve their own procedures for obtaining information necessary for effective control of restrictive business practices.

23. In this context, special attention has to be devoted to the lack of experience in this field of many developing countries and of countries switching from a centrally planned economy to a market-oriented economy. Progress on both elements requires upgraded technical assistance to be

provided by States having acquired greater expertise in this field. Such experience-sharing and assistance is needed both at the level of drafting of appropriate restrictive business practices control legislation and at the level of training of officials responsible for its implementation.

24. The proposal of the developing countries that "States which so far have not done so should establish a public registration system of all restrictive business practices originating in their country and which could adversely affect international trade, particularly the trade and development of the developing countries" 3/ appears to be in line with this provision of the Set, as it applies to all countries. Of course progress in this respect will be further encouraged once a large number of developing countries have adopted restrictive business practices control legislation and are thus in a position to adopt similar public registration systems.

25. Little has been done in the way of implementing provision E.6, except at the level of the European Communities, the European Free Trade Association (EFTA) and the Nordic countries. Another case in point is the Information Center on Antimonopoly Policy for Asian and Oceanian Countries, established at the Fair Trade Commission of Japan, which aims at promoting exchange of information in the region on anti-trust matters. Regional mechanisms providing exchanges of information and co-operation in the field of restrictive business practices control have been suggested in a number of restrictive business practices seminars organized by UNCTAD. One such proposal is being envisaged at the present time by the member countries of the Andean Group.

26. To improve the implementation of provision E.7, it seems appropriate to suggest that one of the central considerations of upgraded technical assistance should be the sharing with developing countries of the experience acquired by developed countries at the regional and subregional levels, in particular the EEC, EFTA and the Nordic countries, but also in the context of bilateral co-operation agreements which have been concluded for example by Australia, Canada, France, the Federal Republic of Germany and the United States. 4/

27. Provision 9 of section E, stipulates that:

> "States should, on request, or at their own initiative when the need comes to their attention, supply to other States, particularly developing countries, publicly available information and, to the extent consistent with their laws and established public policy, other information necessary to the receiving interested State for its effective control of restrictive business practices."

28. This provision, at least with respect to publicly available information, is readily implemented by most if not all States having restrictive business practices control legislation, which supply available information to UNCTAD for further dissemination in the annual report, the restrictive business practices information notes and other reports or studies on specific restrictive business practices.

29. There is no reason to expect States not to respond to direct requests from other States if they readily respond to the requests for information of the UNCTAD secretariat. Moreover, if necessary, the UNCTAD secretariat could provide the requested public information.

30. With respect to "other information", as referred to in provision E.9, the secretariat has no information about the extent to which confidential information is eventually transmitted to other restrictive business practices control authorities. To provide the basis for a well-founded assessment, such information should be obtained from States. This could be achieved by addressing precise questions as to the implementation of provision E.9. It could be asked, for example, whether States have requested publicly available or other information, from which States and for which reasons, in which type of case, and what the response to their request was. They could also be asked to report on whether they have contemplated lodging such requests but have refrained from doing so and for what reasons, whether States have supplied publicly available or other information to other States on their own initiative and for what reasons, and what the reaction of the receiving State was.

31. Progress in the implementation of provision E.9 is closely linked to progress made in provisions E.1, E.2 and E.6, as discussed above. It can be expected that the greater the progress in the implementation of these provisions of the Set, the greater should be the willingness of developed countries to co-operate and provide information.

32. One possibility to facilitate the use of provision E.9 would be to agree on a standard information request form, which would allow the requesting State to identify more easily the specific information it is seeking to obtain within the framework of its restrictive business practices legislation, and to formulate its request in a way which in turn facilitates, as far as possible, compliance by the addressee State. The information request form would provide a detailed description of the case in question, referring to the restrictive business practices identified under provisions 3 and 4 of section D of the Set; it would identify the enterprise or enterprises involved (domestic, located in the addressee State, or in another country); the legal basis for instituting proceedings; the facts already established; the specific information requested; the reasons for requesting this information; and the intended use of the information requested.

33. The advantage of such a request form would be to provide a framework within which a State could precisely articulate its wish for information, thereby facilitating understanding of, and compliance with, the request by the addressee State. At the same time, the practical significance of provision E.9 would become more transparent and an assessment of its implementation easier, allowing possibly, at a later stage, new considerations concerning improved implementation to be taken into account. For practical reasons, especially because the need for information is often linked with a need to discuss such information and its significance with another State, and because the borderline between the exchange of information and consultations is vague,

as is for example illustrated by experience within OECD (see below para. 73), it is suggested that the proposed information request form and a request for consultation form be combined in a single instrument (see below para. 76) which, however, could also be used for requests for information only or for consultations only.

34. Provisions 2 and 3 of section F call for:

> "2. Communication annually to the Secretary-General of UNCTAD of appropriate information on steps taken by States and regional groupings to meet their commitment to the Set of Principles and Rules, and information on the adoption, development and application of legislation, regulations and policies concerning restrictive business practices.
>
> "3. Continued publication annually by UNCTAD of a report on developments in restrictive business practices legislation and on restrictive business practices adversely affecting international trade, particularly the trade and development of developing countries, based upon publicly available information and as far as possible other information, particularly on the basis of requests addressed to all member States or provided at their own initiative and, where appropriate, to the United Nations Centre on Transnational Corporations and other competent international organizations."

35. On the whole, implementation of provision F.2 so far has not been very satisfactory. Reports by States on "steps taken to meet their commitment to the Set" under this provision are often irrelevant and frequently mixed with information to be provided under provision F.3 for the preparation of the UNCTAD secretariat's annual report on restrictive business practices.

36. In order to improve the quality of reports pertaining to both F.2 and F.3, it might be useful to establish a sole questionnaire containing all relevant questions both as regards the implementation of the Set under F.2 and in respect of the general information required under F.3.

37. A uniform questionnaire of the type suggested would not only allow the collection of information about the implementation of those provisions of the Set not yet covered in sufficient detail (e.g. provisions D.2, sentences 2 and 3, E.9 and F.4), but would also provide a number of advantages far outweighing the burden States would have to carry by replying annually to a considerably more detailed questionnaire than before. First, there would be no need to reply more than once a year, while at present there are two reporting requirements under provisions F.2 and F.3. Second, part of the information to be supplied under F.2 or F.3 is often relevant not only under one of these rules, but under both. Third, a more elaborate single questionnaire would increase the comparability of information provided by different States and substantially reduce the risk of incompleteness and of lengthy or irrelevant information being sent. Fourth, States would be made more aware, by such detailed and concrete questionnaires, of parts of the Set of which they could or should make better use. Fifth, a standard questionnaire

would be the best means of collecting comparable, orderly information enabling an adequate, well-founded assessment on the implementation of the Set. Sixth, reporting annually in reply to such a questionnaire would make it possible not only to obtain a static view of the implementation or lack of implementation of the Set, but also a dynamic picture of its development over time.

38. It is proposed that such a questionnaire, in order to provide all the advantages mentioned above, should as far as possible follow the structure of the Set and contain for each of its rules and principles, as far as they require implementation by States, regional groupings, or enterprises, concrete and detailed questions relating to all elements of each of these rules and principles. In view of the particular importance to be attached to the collection and exchange of information and to consultations, special attention should be given to questions relating to provisions D.2, sentences 2 and 3, E.9 and F.4. Special attention should furthermore be given to questions relating to provisions E.1, E.2 and E.6, as any progress in the implementation of these provisions would very likely lead to an improved implementation of other principles and rules of the Set.

B. Different categories of publicly available information on restrictive business practices and addresses of authorities from which such information is obtainable

39. By the end of July 1990, replies to the note of the Secretary-General of UNCTAD TDO 330/15(1) of 31 May 1990 requesting relevant information in this regard had been received from Belgium, Bulgaria, the Federal Republic of Germany, Japan, New Zealand, Singapore, Spain, Sweden, the United Kingdom and the United States. Extracts of these replies and relevant addresses are reproduced below. Further replies received to the Secretary-General's note will be reproduced in an addendum to this report.

BELGIUM

40. Publicly available information on restrictive business practices:

Annual report to Parliament on the application of the law of 27 May 1960 on protection against abuse of economic power. This report is prepared by the Ministry of Economic Affairs. Apart from information concerning the application of the law during the year, the report may also contain synoptic tables of cases investigated, as well as statistics concerning the activity of the official bodies established by the law.

41. This information can be obtained from:

Service Politique et Règles de Concurrence,
Administration du Commerce,
Ministère des Affaires Economiques,
Rue J.A. De Mot, 24-26
B - 1040 Bruxelles (Belgique).

BULGARIA

42. In view of the significant changes which have occurred in Bulgaria since November 1989, there is pending the adoption of a number of laws by the Great National Assembly, including laws in the field of restrictive business practices. Further information will be available in this respect once the legislation is adopted.

43. The address of the competent organization in charge of issues related to restrictive business practices in Bulgaria is as follows:

Ministry of Foreign Economic Relations
International Organizations Department
12, Sofiiska Komuna Str.
Sofia 1000, Bulgaria

FEDERAL REPUBLIC OF GERMANY

44. Publicly available information on restrictive business practices:

(a) Biennial reports of the Federal Cartel Office (FCO) (in German only);

(b) Biennial reports of the Monopolies Commission (in German only);

(c) FCO press releases on specific cases (in English);

(d) Administrative rules issued by the FCO from time to time with respect to certain restrictive business practices (in German only);

(e) Decisions by the FCO as well as the courts in specific cases (as far as they do not contain any business secrets) (in German only).

45. The above-mentioned information can be obtained from the following addresses:

(1) Federal Ministry of Economics
Villemombler Str. 76
5300 Bonn 1
Phone : (0228) 61 51
Telefax: (0228) 615 44 36
Telex : 886 747

(2) Federal Cartel Office
Mehringdamm 129
1000 Berlin 61
Phone : (030) 69 011
Telefax: (030) 69 01 400
Telex : 184 321

(3) Monopolies Commission
Barbarastr. 1
5000 Köln 60
Phone : (0221) 77 80 11 48
Telefax: (0221) 77 80 12 81

JAPAN

46. Publicly available information on restrictive business practices:

(a) Annual report. Published in Japanese since 1947. Its English version has been supplied to the UNCTAD secretariat since 1984.

(b) Fair Trade Commission/Japan views. An English quarterly published since 1988.

47. The above information may be obtained from:

External Affairs Office, secretariat
Fair Trade Commission
2-2-1 Kasumigaseki, Chiyoda-Ku
Tokyo 100 Japan
Tel 03-581-5471

NEW ZEALAND

48. Publicly available information on restrictive business practices:

Annual Report	presented to the House of Representatives (includes reports on Commission cases and activities in the areas of mergers and takeovers and restrictive practices)
Competitive Review	Current issues in New Zealand competition and consumer law Vol. 1 May 1988 Vol. 2 December 1989
Occasional Papers	"International Perspectives on the Application of Competition and Consumer Laws", Seminar, October 1987
	"Analysis of Mergers and Takeover Consents for the Year ended 31 March 1986"
	"Barriers to Entry and Competition Law"
	"Essential Facilities Doctrine"

49. The Commerce Commission releases reports to the press on cases investigated, and it publishes brochures and pamphlets relating to restrictive trade practices and to various aspects of the Commerce Act 1986 and the Fair Trading Act 1986.

50. The above information may be obtained from:

Commerce Commission
P.O. Box 2351
Wellington
Phone : (04) 710-180
Telefax: (04) 710-771

51. Further details of court cases and Commerce Commission decisions involving restrictive business practices are reported in the "New Zealand Business Law Guide", published by Commerce Clearing House N.Z. Ltd., P.O. Box 2378, Auckland.

52. Information relating to restrictive business practices control policy may also be obtained from:

Ministry of Commerce
Competition Policy and Business Law Division
P.O. Box 1473
Wellington
Phone : (04) 720-030
Telefax: (04) 499-1791

SINGAPORE

53. Publicly available information:

There is no single authority in Singapore responsible for restrictive business practices. The Singapore Registry of Companies and Business (RCB) is the primary registration authority for all business entities. All prescribed forms or documents of all registered business entities required by law to be lodged with the RCB (such as annual returns, audited accounts) are available for public inspection upon payment of a prescribed fee.

54. The address of the Singapore RCB is at:

Colombo Court, #06-06-/16, Singapore 0617.

SPAIN

55. Publicly available information on restrictive business practices includes:

- Annual reports for EEC, OECD and UNCTAD, which analyse changes in competition law, the application of legislation and developments in legislation in the field of competition;

- The annual report of the Competition Tribunal, which collects together the rulings, appeals and sentences of the Tribunal;

- Public information notices referring to cases initiated, appearing in various official and daily general information publications.

These notices contain a description of the complaint and set a deadline for the collection of information in connection with the case.

- The rulings of the Competition Tribunal, providing an analysis of the facts and stating the sentence;

- Biennial compendia of rulings published by the Competition Tribunal.

56. In addition, items and articles appear in other media at irregular intervals as cases of special interest arise.

57. The addresses of the responsible authorities are:

Tribunal de Defensa de la Competencia
Avda. Pío XII, 17-19
28016 Madrid - Tel. 2505400

Dirección General de Defensa de la Competencia
Paseo de la Castellana, 162
28071 Madrid - Tel. 2596922

SWEDEN

58. Publicly available information on restrictive business practices:

The Competition Ombudsman's activities are based on the Competition Act of 1982. Most competition cases are settled by the Competition Ombudsman, who decides in between 400 and 500 cases each year. All these decisions are made public. Around 10 cases a year are brought by the Competition Ombudsman to the Market Court and to General Courts of Law. Decisions by these courts are also made public. Documentation in the above-mentioned cases are normally available to the public. Only in those cases where the Secrecy Act is applicable is such documentation confidential. Many of the necessary investigations are carried out at the Competition Ombudsmans Office by his own staff, but major inquiries are made at the request of the Competition Ombudsman by the Price and Competition Board, the Bank Inspection Board and the Private Insurance Supervisory Service. Such investigations are also made public. The latter three agencies also keep publicly available cartel registers concerning restrictive business practices agreements which have effects within Sweden. Both the Competition Ombudsman and the Price and Competition Board issue publicly available annual reports. The Price and Competition Board publishes a number of reports concerning competition issues other than those requested by the Competition Ombudsman. The Price and Competition Board also issues periodicals dealing with competition matters. One of these is Pris och Konkurrens (Price and Competition; four volumes per year) which contains summaries of reports by the Price and Competition Board and decisions by the Competition Ombudsman and the Market Court. Other such periodicals deal with competition in the energy sector (Energiaktuellt), reports on mergers and acquisitions (Aktuellt om fusioner) and consumer price developments in Sweden and abroad (Prisutvecklingen).

59. The addresses of the restrictive business practices authorities are as follows:

The Office of the Competition Ombudsman
Box 2263
103 16 Stockholm
Telephone 08-6176650

The Price and Competition Board
Box 70496
107 26 Stockholm
Telephone 08-7001500

The Market Court
Box 2217
103 15 Stockholm
Telephone 08-244155

UNITED KINGDOM

60. The Annual Report of the Director General for Fair Trading, as well as press notices concerning restrictive business practices, can be obtained from the Information Branch, Office of Fair Trading, Field House, 15-25 Bream's Building, London EC4A 1PR. Monopolies and Mergers Commission reports are available from Her Majesty's Stationery Office, Publications Centre, 51 Nine Elms Lane, Vauxhall, London SW8 5DR.

UNITED STATES OF AMERICA

61. In the United States, the federal antitrust laws are enforced by two agencies, the Antitrust Division of the Department of Justice ("Department") and the Federal Trade Commission (FTC). In addition, nearly all of the 50 States have their own antitrust laws, which are enforced by the Attorneys General of the various States. Finally, both federal and State antitrust laws provide for private rights of action, whereby persons injured by anticompetitive conduct can take legal action to obtain redress for their injuries; in 1989 alone, nearly 700 lawsuits were filed by private parties pursuant to the federal antitrust laws.

(i) Publicly available information on antitrust enforcement actions and antitrust issues

(a) General

62. There is an immense amount of publicly available information on United States antitrust law and United States Government antitrust enforcement. First, juridical decisions in antitrust cases are published in official reports (e.g. the Federal Reporter and the United States Reports of the Supreme Court of the United States) and commercial publications (e.g., the Trade Regulation Reports, published by Commerce Clearing House, Inc., (CCH) and the Antitrust and Trade Regulation Report, published by the Bureau of National Affairs, Inc. (BNA)). Second, the Government antitrust agencies publish a great deal of material, as discussed in detail below; much of that material is also reproduced, in full text and/or summary form, by the CCH and BNA publications mentioned above and by other commercial publications. Finally, there are many secondary sources on antitrust matters, including legal treatises (e.g. the multi-volume Antitrust Law by P. Areeda and D. Turner, and Antitrust Law Developments by the Section of Antitrust Law of the American Bar Association) and articles in the hundreds of law reviews published in the United States, some of which (e.g., Antitrust Law Journal and Antitrust Bulletin) are devoted exclusively to antitrust issues.

(b) Department of Justice

63. When the Department's Antitrust Division initiates a criminal or civil antitrust enforcement action against a firm or an individual (e.g. in a price-fixing, bid-rigging or merger case) it does so in court and does so publicly. The documents it files in court are almost always public (some portions of some documents may not be made public in order to preserve grand jury secrecy or business confidentiality) and are available either from the court or from the Department. In addition, at the time of filing an enforcement action, the Department often issues a press release explaining its action.

64. In addition to information about particular enforcement actions, the Department has published several enforcement guidelines in order to inform the public about its enforcement policy. These guidelines include the "Merger Guidelines" (1984), the "Vertical Restraints Guidelines" (1985), and the "Antitrust Enforcement Guidelines for International Operations" (1988). The Department also publishes a wide variety of other documents about its work, including: the comprehensive report on United States antitrust developments submitted each year by the Department and the FTC to the Organisation for Economic Co-operation and Development; testimony before Congress by senior Antitrust Division officials on antitrust enforcement issues and proposed antitrust legislation; speeches by senior Antitrust Division officials on enforcement topics; papers on antitrust issues written by economists of the Antitrust Division's Economic Analysis Group; the Digest of Business Reviews; and reports requested by Congress (e.g. reports made each year from 1979 through 1985 on competition in the coal industry, and a report made in 1990 on the impact of the Shipping Act of 1984).

(c) Federal Trade Commission

65. The Federal Trade Commission's Bureaux of Competition and Consumer Protection, like the Antitrust Division, initiate civil actions in courts, and their filings are usually available to the public. The Bureaux also bring administrative proceedings before administrative law judges that can be appealed to the Commission. Decisions of the administrative law judges and the Commission are available in a number of the commercial publications noted above and are published by the Commission as well. Each year the Bureau of Economics issues a number of studies and reports on a variety of issues and industries that are available at the address set out below.

(ii) Addresses of Government Antitrust Authorities

66. Written information about the activities of the Antitrust Division of the Department of Justice can be obtained from:

Legal Procedure Office
Antitrust Division
Department of Justice
Room 3233 Main
10th & Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Telephone number - (202) 514-2481.

67. Written information about the activities of the Federal Trade Commission can be obtained from:

Public Reference Section
Federal Trade Commission
Washington, D.C. 20580
Telephone number - (202) 326-2222.

68. Written information about the antitrust enforcement activities of the various State Attorneys General can be obtained either from the State Attorney General in question or from the National Association of Attorneys General (NAAG), 444 North Capitol Street, N.W., Washington, D.C. 20001. NAAG's telephone number is (202) 628-0435.

C. Addresses of other restrictive business practices control authorities

69. While all the replies by States to the Secretary-General of UNCTAD's note TDO 330/15(1) have not been received, for the sake of completeness, the secretariat recalls the following directory of addresses of relevant restrictive business practices control authorities:

ARGENTINA

Comision Nacional de Defensa
de la Competencia
Secretaria de comercio Interior
Av. J.A. Roca 651
1322 Buenos Aires
Argentina

AUSTRALIA

Assistant Secretary
Competition Policy Branch
Attorney General's Department
Robert Garran Offices
BARTON ACT 2600
Australia

BRAZIL

Conselho Administrativo
de Defesa Economica (CADE)
Ministerio da Justiça
Esplanada dos Ministerios
Anexo I
70064 Brasilia - DF
Brazil

Director, United Nations Section
International Trade Organization
Branch
Department of Trade
Kings Avenue
BARTON ACT 2600
Australia

CANADA

Director of Investigation and Research
Combines Investigation Act
Consumer and Corporate Affairs Canada
Ottawa, Ontario KLA 009 Canada

CHILE

Fiscalia Nacional Económica
Agustinas 853, Piso 12
Santiago de Chile
Chile

CHINA

Bureau of Legislative Affairs
State Council, P.R.C.
P.O. Box 1750
Beijing-VR China

DENMARK

Monopoltilsynet
Norregade 49
DK - Kopenhagen K

EUROPEAN COMMUNITIES

Direction Générale de la Concurrence
200 rue de la Loi
B-1049 Bruxelles

FINLAND

Office of Free Competition
Haapaniemenkatu 5
P.O.B. 332
SF - 00531 Helsinki

FRANCE

Conseil de la Concurrence
11 rue de l'Echelle
75001 Paris

Direction Générale de la
Concurrence, de la Consommation
et de la Repression des Fraudes
Ministère de l'Economie
41, quai Branly
F - 75700 Paris

HUNGARY

Institut für Staats- und
Rechtswissenschaften der Ungarischen
Akademie der Wissenschaften
1, Országház U. 30
H - 1250 Budapest, P.O.B. 25

ICELAND

Price and Competition Board
Verolagsstofnun
Laugavegur 118
IS - 105 Reykjavik

INDIA

Monopolies and Restrictive Trade
Practices Commission
Travancore House
Kasturba Gandhi Marg
New Delhi
India

IRELAND

Restrictive Practices Commission
50, Upper Mount Street
IRL - Dublin 2

KENYA

The Commissioner
Monopolies & Prices Commission
Ministry of Finance
P.O. Box 30007
EAK - Nairobi

KOREA

Fair Trade Commission
I, Chungang-Dong
Kwach'on, Kyonggi
Republic of Korea

NETHERLANDS

Office of Competition and Mergers
Ministry of Economic Affairs
Bezuidenhoutseweg 30
2594 AV The Hague

PAKISTAN

Corporate Law Authority
National Bank Building
Islamabad
Pakistan

POLAND

The Antimonopoly Office
Ministry of Finance
12 Swietokrzyska St.
PL - 00-916 Warsaw

PORTUGAL

Service de la Concurrence et des
Prix
Ministère du Commerce
Av. Visconde Valmor, 72
P - 1093 Lisbonne Cedex

SRI LANKA

Fair Trading Commission
5th Floor, Lakshman's Building
P.O. Box 1688
321, Galle Road
CL - Colombo 3

SWITZERLAND

Office Fédéral des Affaires
Economiques Extérieures
CH - 3003 Berne

Commission Suisse des Cartels
Belpstrasse 53
3003 Berne

THAILAND

Department of Internal Trade
Ministry of Commerce
Maharaj Road
Bangkok 10200
Thailand

Chapter II

PROPOSALS FOR THE DEFINITION OF CONSULTATION PROCEDURES

70. The consultation procedures described in paragraph 4 of Section F of the Set provide that:

> "(a) Where a State, particularly of a developing country, believes that a consultation with another State or States is appropriate in regard to an issue concerning control of restrictive business practices, it may request a consultation with those States with a view to finding a mutually acceptable solution. When a consultation is to be held, the States involved may request the Secretary-General of UNCTAD to provide mutually agreed conference facilities for such a consultation;
>
> (b) States should accord full consideration to requests for consultations and, upon agreement as to the subject of and the procedures for such a consultation, the consultation should take place at an appropriate time;
>
> (c) If the States involved so agree, a joint report on the consultations and their results should be prepared by the States involved and, if they so wish, with the assistance of the UNCTAD secretariat, and be made available to the Secretary-General of UNCTAD for inclusion in the annual report on restrictive business practices."

71. These procedures have not been satisfactorily used to date, and although there may be many explanations for this, an adequate assessment of the implementation or the non-implementation of section F.4 needs to be based on reliable information. Questions designed to provide the necessary information could be incorporated in the uniform questionnaire suggested with respect to the analysis of provisions F.2 and F.3 (see para. 37 above).

72. Among the questions that could be addressed to States concerning provision F.4, are the following:

A. Have formal consultations been requested?

(a) If yes, (i) from which State?

(ii) in which type of case?

(iii) under which applicable national law?

(iv) was it a domestic case?

(v) an international case?

(vi) what type of restraint was involved?

(These types would follow the list of restrictive business practices as contained under provisions D.3 and D.4 of the Set, in the same way as the information request form proposed in paragraph 32 of the present report).

(vii) what were the reasons for lodging the request for consultation?

(b) What has been the reaction of the State addressed?

(i) fully positive? If yes, what did it do or undertake?

(ii) partly positive? If yes, what reasons were given?

(iii) negative? If yes, what were the reasons?

B. Have informal consultations been requested?

If yes, same questions as under A.

C. Have requests for formal or informal consultations been envisaged but not addressed to another State?

If yes, (i) same questions as under A above.

(ii) what were the reasons for not lodging a request for consultations after consideration of the case? Was it considered that domestic information was sufficient? Was it that no satisfactory solution was expected from the consultation? Was the request for consultation discouraged by the envisaged addressee of the request? Any other reasons?

73. Experience in other international fora such as OECD and in the context of bilateral co-operation agreements in the field of restrictive business practices seems to indicate that formalized procedures tend to be avoided, 5/ preference being given to informal exchanges of views. The use of the - voluntary - Revised OECD Recommendation of the Council Concerning Co-operation between Member-Countries on Restrictive Business Practices Affecting International Trade [C(86)44(Final)] of 21 May 1986, and its predecessors, providing for the exchange of information, consultations and conciliation, illustrates this attitude very clearly even among OECD countries adhering to similar competition policies. 6/ It should be noted that the conciliation part of the Recommendation has never been used, while the information part is playing an increasing role. Bilateral consultations have taken place between the competent restrictive business practices authorities, but on an informal basis, with authorities agreeing among themselves about time, place, subject and procedure of consultations.

74. Even the notion of "consultations" has remained vague; thus, for example, it would seem justifiable to qualify as consultations certain cases in which information has been exchanged, or in which officials of an OECD Member State visited the authority of another Member State to informally discuss certain subjects. On the whole, it would seem that the co-operation of officials from Member States in the OECD Committee on Competition Law and Policy, based primarily on an atmosphere of mutual understanding and the willingness to co-operate by exchanging information and discussing problems of common interest, is on an entirely voluntary basis and that this is what has led to consultations among States rather than the formal consultation rules of the Recommendation. The same appears to be true for a number of bilateral co-operation agreements. Also, similar competition philosophies, the mutual acquaintance of competition authorities and of officials, mutual trust and understanding, seem to stimulate the discussion of issues of common concern rather than the formal rules contained in the agreements. Thus, increased efforts to implement provisions E.1, E.2 and E.6 and increased technical assistance with this objective would promote a process in which such forms of co-operation could effectively be used by a wider number of countries.

75. As OECD countries have well-established relationships between their restrictive business practices control authorities and so far do not often face situations in which they would feel the need to consult with a developing country, it appears to be of primary importance to encourage developing countries and countries in transition to market-economy systems to have recourse to provision F.4, and in this connection to facilitate the formulation of requests for consultations. One instrument for this purpose would include the maintenance of a regularly updated list of authorities/persons in Member States empowered to lodge and receive requests for consultations, indicating, for example, name, title, address, telephone, telex and telefax numbers of such authorities/persons. This need is partly fulfilled in sections I.B and I.C of this report containing the addresses of restrictive business practices control authorities.

76. A second instrument would be a request form for the use of countries which contemplate requesting consultations, and which should be part of the request form suggested in connection with provision E.9 (see para. 32 above). The advantages of having only one instrument designed to facilitate both requests for information and requests for consultations are obvious and have already been mentioned above (see para. 33 above). Such a form for requesting information and/or consultations without formalizing procedures in any way and without imposing obligations on any side but leaving full freedom to the parties as regards the subject of consultations, their objectives and modalities, participation of third parties etc., would be in line with the experience acquired in OECD and would undoubtedly increase the likelihood of provision F.4 being used. In addition to the points addressed in the part of the request form relating to information (see para. 32 above), the part pertaining to consultations should allow States to explain the reasons for requesting consultations, the suggested subject and proposed modalities for such consultations (time, place, participants) to be agreed upon by the States concerned.

77. It is assumed that once restrictive business practices have been identified, countries in which such practices are deemed to originate would be willing to engage in bilateral, plurilateral or multilateral consultations. It would be useful if the results of such consultations could be publicized, as suggested under provision F.4 (c) of the Set, for example by reproducing them in the UNCTAD annual report on restrictive business practices legislation. This would no doubt facilitate understanding among States in this area and would encourage them to turn to such consultations to resolve differences on similar or related cases.

78. A further procedure of conciliation could be envisaged, especially in cases where it has not been possible to reach agreements under the consultation procedures defined under section F.4. In such cases, panels or working parties could be envisaged with a view to finding a mutually satisfactory solution.

Notes

1/ The Set, as adopted by the General Assembly in resolution 35/63 of 5 December 1980, is contained in document TD/RBP/CONF/10/Rev.1.

2/ Report of the Intergovernmental Group of Experts on Restrictive Business Practices on its seventh session (TD/B/1210 - TD/B/RBP/56, para. 29).

3/ Contained in report of the Intergovernmental Group of Experts on Restrictive Business Practices, on its seventh session (TD/B/1210 - TD/B/RBP/56, para. 29).

4/ Bilateral co-operation agreements in the field of restrictive business practices control include the United States-Federal Republic of Germany agreement of 23 June 1976; the United States-Australia agreement of 29 June 1982; the Memorandum of Understanding between Canada and the United States of 9 March 1984; and the agreement between France and the Federal Republic of Germany of 28 May 1984. These agreements provide for exchanges of information, early notification of proceedings which may affect the interests of the other party, and a consultation mechanism.

5/ See in this respect, Competition Policy and International Trade: OECD Instruments of Co-operation, (OECD, Paris, 1986).

6/ The Revised OECD Recommendation, adopted by the Council at its 643rd Meeting on 21 May 1986, is reproduced in the annex to the present document.

Annex

OECD-REVISED RECOMMENDATION OF THE COUNCIL

concerning co-operation between Member countries on restrictive business practices affecting international trade
[C(86)44(Final)]

(adopted by the Council at its 643rd Meeting on 21 May 1986)

The Council,

Having regard to article 5 (b) of the Convention on the Organization for Economic Co-operation and Development of 14 December 1960;

Having regard to the Recommendation of the Council of 25 September 1979, concerning Co-operation between Member countries on Restrictive Business Practices Affecting International Trade [C(79)154(Final)] which repealed and superseded the Recommendations of the Council of 5 October 1967 and of 3 July 1973 on the same subject;

Having regard to the request made by the Council meeting at Ministerial level in May 1982 to the Committee of Experts on Restrictive Business Practices to undertake a review of the 1979 Council Recommendation [C/M(82)12 Part I (Final), items 114 and 115, para. 12 (a)];

Having regard to the report by the Committee of Experts on Restrictive Business Practices on the operation of the 1979 Council Recommendation during the period 1980 to mid-1985 [RBP(86)2(1st Revision), Part A];

Having regard to the report by the Committee of Experts on Restrictive Business Practices on international co-operation in the collection of information for purposes of competition law enforcement and, in particular, the suggestions for action contained in that report (paras. 173 to 179);

Recognizing that restrictive business practices may constitute an obstacle to the achievement of economic growth, trade expansion and other economic goals of Member countries such as the control of inflation;

Recognizing that the unilateral application of national legislation, in cases where business operations in other countries are involved, raises questions as to the respective spheres of sovereignty of the countries concerned;

Recognizing the need for Member countries to give effect to the principles of international law and comity and to use moderation and self-restraint in the interest of co-operation in the field of restrictive business practices;

Recognizing that restrictive business practices, investigations and proceedings by one Member country may, in certain cases, affect important interests of other Member countries;

Considering therefore that Member countries should co-operate in the implementation of their respective national legislation in order to combat the harmful effects of restrictive business practices;

Considering also that closer co-operation between Member countries is needed to deal effectively with restrictive business practices operated by enterprises situated in Member countries when they affect the interests of one or more other Member countries and have a harmful effect on international trade;

Considering moreover that closer co-operation between Member countries in the form of notification, exchange of information, co-ordination of action, consultation and conciliation, on a fully voluntary basis, should be encouraged, it being understood that such co-operation should not, in any way, be construed to affect the legal positions of Member countries with regard to questions of sovereignty, and in particular, the extra-territorial application of laws concerning restrictive business practices, as may arise;

Recognizing the desirability of setting forth procedures by which the Committee can act as a forum for exchanges of views, consultations and conciliation on matters related to restrictive business practices affecting international trade;

Considering that if Member countries find it appropriate to enter into bilateral arrangements for co-operation in the enforcement of national competition laws, they should take into account the present Recommendation and Guiding Principles,

I. Recommends to the Governments of Member countries that in so far as their laws permit:

A. NOTIFICATION, EXCHANGE OF INFORMATION AND CO-ORDINATION OF ACTION

1. (a) When a Member country undertakes under its restrictive business practices laws an investigation or proceeding which may affect important interests of another Member country or countries, it should notify such Member country or countries, if possible in advance, and, in any event, at a time that would facilitate comments or consultations; such advance notification would enable the proceeding Member country while retaining full freedom of ultimate decision to take account of such views as the other Member country may wish to express and of such remedial action as the other Member country may find it feasible to take under its own laws to deal with the restrictive business practices;

(b) Where two or more Member countries proceed against a restrictive business practice in international trade, they should endeavour to co-ordinate their action in so far as appropriate and practicable;

2. Through consultations or otherwise, the Member countries should co-operate in developing or applying mutually satisfactory and beneficial measures for dealing with restrictive business practices in international trade. In this connection, they should supply each other with such relevant information on restrictive business practices as their legitimate interests permit them to disclose; and should allow, subject to appropriate safeguards, including those relating to confidentiality, the disclosure of information to the competent authorities of Member countries by the other parties concerned, whether accomplished unilaterally or in the context of bilateral or multilateral understandings, unless such co-operation or disclosure would be contrary to significant national interests.

B. CONSULTATION AND CONCILIATION

3. (a) A Member country which considers that a restrictive business practice investigation or proceeding being conducted by another Member country may affect its important interests should transmit its views on the matter to or request consultation with the other Member country;

(b) Without prejudice to the continuation of its action under its restrictive business practices law and to its full freedom of ultimate decision the Member country so addressed should give full and sympathetic consideration to the views expressed by the requesting country, and in particular to any suggestions as to alternative means of fulfilling the needs or objectives of the restrictive business practice investigation or proceeding;

4. (a) A Member country which considers that one or more enterprises situated in one or more other Member countries are or have been engaged in restrictive business practices of whatever origin that are substantially and adversely affecting its interests, may request consultation, with such other Member country or countries recognising that entering into such consultations is without prejudice to any action under its restrictive business practices law and to the full freedom of ultimate decision of the Member countries concerned;

(b) Any Member country so addressed should give full and sympathetic consideration to such views and factual materials as may be provided by the requesting country and, in particular, to the nature of the restrictive business practices in question, the enterprises involved and the alleged harmful effects on the interests of the requesting country;

(c) The Member country addressed which agrees that enterprises situated in its territory are engaged in restrictive business practices harmful to the interests of the requesting country should attempt to ensure that these enterprises take remedial action, or should itself take whatever remedial action it considers appropriate, including actions under its legislation on restrictive business practices or administrative measures, on a voluntary basis and considering its legitimate interests;

5. Without prejudice to any of their rights, the Member countries involved in consultations under paragraphs 3 and 4 above should endeavour to find a mutually acceptable solution in the light of the respective interests involved;

6. In the event of a satisfactory conclusion to the consultations under paragraphs 3 and 4 above, the requesting country, in agreement with, and in the form accepted by, the Member country or countries addressed, should inform the Committee of Experts on Restrictive Business Practices of the nature of the restrictive business practices in question and of the settlement reached;

7. In the event that no satisfactory conclusion can be reached, the Member countries concerned, if they so agree, should consider having recourse to the good offices of the Committee of Experts on Restrictive Business Practices with a view to conciliation. If the Member countries concerned agree to the use of another means of settlement, they should, if they consider it appropriate, inform the Committee of such features of the settlement as they feel they can disclose.

II. Recommends that Member countries take into account the guiding principles set out in the Appendix to this Recommendation.

III. Instructs the Committee of Experts on Restrictive Business Practices,

1. To examine periodically the progress made in the implementation of the present Recommendation and to serve periodically or at the request of a Member country as a forum for exchanges of views on matters related to the Recommendation on the understanding that it will not reach conclusions on the conduct of individual enterprises or governments;

2. To consider the reports submitted by Member countries in accordance with paragraph 6 of Section I above;

3. To consider the requests for conciliation submitted by Member countries in accordance with paragraph 7 of Section I above and to assist, by offering advice or by any other means, in the settlement of the matter between the Member countries concerned;

4. To report to the Council as appropriate on the application of the present Recommendation.

IV. Decides that this Recommendation and its Appendix cancel and replace the Recommendation of the Council of 25 September 1979 [C(79)154(Final)].

Appendix

GUIDING PRINCIPLES FOR NOTIFICATIONS, EXCHANGES OF INFORMATION, CONSULTATIONS AND CONCILIATION ON RESTRICTIVE BUSINESS PRACTICES AFFECTING INTERNATIONAL TRADE

Purpose

1. The purpose of these principles is to clarify the procedures laid down in the Recommendation and thereby to strengthen co-operation and to minimise conflicts in the enforcement of competition laws.

Notification

2. The circumstances in which a notification of an investigation or proceeding should be made include:

(a) When it is proposed that, through a written request, information will be sought from the territory of another Member country or countries;

(b) When it concerns a practice carried out wholly or in part in the territory of another Member country or countries, whether the practice is purely private or whether it is required, encouraged or approved by the government or governments of another country or countries;

(c) When the investigation or proceeding previously notified, may reasonably be expected to lead to a prosecution or other enforcement action which may affect an important interest of another Member country or countries;

(d) In any other situation where the investigation or proceeding may involve important interests of another Member country or countries.

Procedure for notifying

3. (a) Under the Recommendation notification should be "if possible in advance". However there may be cases, for example relating to certain kinds of mergers, where advance notification could prejudice the investigative action or proceeding. In such a case notification and, when requested, consultation should take place as soon as possible and in sufficient time to enable the views of the other Member country to be taken into account. Before any formal legal or administrative action is taken, the notifying country should ensure, to the fullest extent possible in the circumstances, that it would not prejudice this process.

(b) Notification of an investigation or proceeding should be made in writing through the channels requested by each country as indicated in a list to be established and periodically updated by the Committee of Experts on Restrictive Business Practices.

(c) The content of the notification should be sufficiently detailed to permit an initial evaluation by the notified country of the likelihood of any effects on its national interests. It should include, if possible, the names of the persons or enterprises concerned, the activities under investigation, the character of the investigation or procedure and the legal provisions concerned.

Collection of information from persons or enterprises located abroad

4. (a) Member countries should use moderation and self-restraint and take into account the substantive laws and procedural rules in the foreign forum when exercising their investigatory powers with a view to obtaining information located abroad.

(b) Before seeking information located abroad, Member countries should consider whether adequate information is conveniently available from sources within their national territory.

(c) Any requests for information located abroad should be framed in terms that are as specific as possible.

Consultations between Member countries

5. (a) The country notifying an investigation or proceeding should conduct its investigation or proceeding, to the extent possible under legal and practical time constraints, in a manner that would allow the notified country to request informal consultations or to submit its views on the investigation or proceeding.

(b) Requests for consultation under paragraphs 3 and 4 of the Recommendation should be made as soon as possible after notification and explanation of the national interests affected should be provided in sufficient detail to enable full consideration to be given to them.

(c) The notified Member country should, where appropriate, consider taking remedial action under its own legislation in response to a notification.

(d) All countries involved in consultations should give full consideration to the interests raised and to the views expressed during the consultations so as to avoid or minimize possible conflict.

Conciliation

6. (a) If they agree to the use of the Committee's good offices for the purpose of conciliation in accordance with paragraph 7, Member countries should inform the Chairman of the Committee and the secretariat with a view to invoking conciliation.

(b) The secretariat should continue to compile a list of persons willing to act as conciliators.

(c) The procedure for conciliation should be determined by the Chairman of the Committee in agreement with the Member countries concerned.

(d) Any conclusions drawn as a result of the conciliation are not binding on the Member countries concerned and the proceedings of the conciliation will be kept confidential unless the Member countries concerned agree otherwise.

Confidentiality

7. When engaging in notification, consulation or any other form of co-operation under this Recommendation, the degree to which a Member country discloses information to another Member country may be subject to and dependent upon the assurances of confidentiality given by the other Member country. When supplying information, Member countries should indicate the degree to which and the length of time during which the information should be treated as confidential. At the request of the country providing information, the receiving country should consider the information exchanged to be confidential and that it will not be disclosed unless the country providing the information agrees to its disclosure or disclosure is compelled by law. Member countries receiving such information should take all reasonable steps to ensure observance of the confidentiality requested.

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SECOND UNITED NATIONS CONFERENCE TO REVIEW ALL ASPECTS OF THE SET OF MULTILATERALLY AGREED EQUITABLE PRINCIPLES AND RULES FOR THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES

Geneva, 26 November 1990
Item 8 of the provisional agenda

REVIEW OF ALL ASPECTS OF THE SET OF MULTILATERALLY AGREED EQUITABLE PRINCIPLES AND RULES FOR THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES

A. Review of ten years of application and implementation of the Set of Principles and Rules

B. Consideration of proposals for the improvement and further development of the set, including international co-operation in the field of control of restrictive business practices

TECHNICAL ASSISTANCE, ADVISORY AND TRAINING PROGRAMMES ON RESTRICTIVE BUSINESS PRACTICES

Report by the UNCTAD secretariat

GE.90-52163

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Statement of income and expenditure as at 30 June 1990 of Project No.TX.INT/86/A01

Chapter I

INTRODUCTION

1. The Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices[1] , in paragraph 6 of Section F, concerning international measures, calls for "Implementation within or facilitation by UNCTAD, and other relevant organizations of the United Nations system in conjunction with UNCTAD, of technical assistance, advisory and training programmes on restrictive business practices, particularly for developing countries". In this respect

> "(a) Experts should be provided to assist developing countries, at their request, in formulating or improving restrictive business practices legislation and procedures; (b) Seminars, training programmes or courses should be held, primarily in developing countries, to train officials involved or likely to be involved in adminstering restrictive business practices legislation and, in this connexion, advantage should be taken, *inter alia*, of the experience and knowledge of administrative authorities, especially in developed countries, in detecting the use of restrictive business practices; (c) A handbook on restrictive business practices legislation should be compiled; (d) Relevant books, documents, manuals and any other information on matters related to restrictive business practices should be collected and made available, particularly to developing countries; (e) Exchange of personnel between restrictive business practices authorities should be arranged and facilitated; (f) International conferences on restrictive business practices legislation and policy should be arranged; (g) Seminars for an exchange of views on restrictive business practices among persons in the public and private sectors should be arranged."

2. Moreover, in paragraph 7 of Section F of the Set, it is stated that:

> "International organizations and financing programmes, in particular the United Nations Development Programme, should be called upon to provide resources through appropriate channels and modalities for the financing of activities set out in paragraph 6 above. Furthermore, all countries are invited, in particular the developed countries, to make voluntary financial and other contributions for the above-mentioned activities."

3. After 1980, implementation of the provisions of the Set dealing with technical assistance was slow to start, in particular for lack of appropriate funding. Funds provided by UNDP, which was requested to provide resources under the Set as well as by the Intergovernmental Group of Experts on Restrictive Business Practices at its various sessions, have been limited to a portion of project RAS/86/020/1-01-40 entitled "Assistance for international negotiations" (see chapter II.D). Action was initiated by UNCTAD when voluntary contributions were received from Norway and Sweden in 1986. Since the first regional African RBP Seminar, which took place in Nairobi (Kenya) in May 1986, a number of technical assistance activities have taken place, and the pace of such activities has been increasing in 1990. The changing world situation and the realization in a growing number of countries of the necessity to liberalize market structures, and to rely increasingly on competition to improve economies, have gained momentum. Hence, there has been a considerable demand for assistance, advisory and training services from individual countries interested in the adoption, improvement and effective implementation of their restrictive business practices control legislation.

4. At present, the UNCTAD secretariat does not have the financial or the human resources necessary to respond adequately to the requests of developing countries in this area. It is hoped that the forthcoming United Nations Conference to Review all Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices will be able to take decisive action in this respect.

5. The Intergovernmental Group of Experts on Restrictive Business Practices at its ninth session, which acted as the preparatory body for the Review Conference, decided, *inter alia*, in its agreed

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1 The Set, as adopted by General Assembly in its resolution 35/63 of 5 December 1980, is contained in document TD/RBP/CONF/10/Rev.1.

conclusions[2] to request the UNCTAD secretariat to prepare, for the use of the Review Conference:

> "So that the Conference can make an accurate assessment of requirements in this respect, a report on technical assistance on RBP control issues in order to ensure the efficient use of resources, which should include:
>
> **(i)** A descriptive review of technical assistance already carried out, its contribution to the control of RBPs and its costs, specified on an individual programme basis;
>
> **(ii)** A list of the requests for technical assistance made so far; and
>
> **(iii)** Based on the foregoing, proposals for a framework for a technical assistance programme that in the secretariat's view is needed with regard to RBP control."

6. Accordingly, the present report contains a descriptive review of technical assistance already carried out and being carried out in the field of restrictive business practices, a preliminary assessment of its contribution to the control of RBPs and its costs; a review of pending requests for technical assistance, advisory and training services received so far from individual countries, and a proposal for a framework for technical assistance prepared by the UNCTAD secretariat.

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2 See para.5 (c) of the Agreed Conclusions, contained in Annex I to the Report of the Intergovernmental Group of Experts on Restrictive Business Practices on its ninth session, document TD/B/1261-TD/B/RBP/76.

Chapter II

DESCRIPTIVE REVIEW OF TECHNICAL ASSISTANCE ALREADY CARRIED OUT, ITS CONTRIBUTION TO THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES, AND ITS COSTS

7. A range of activities have taken place in this area, some implemented by UNCTAD, others in co-operation with individual countries and organizations, others were dealt with directly by the States concerned.

8. The following lines give a brief description of the technical assistance which has taken place, or which is presently being implemented.

A. UNCTAD Trust Fund - INT/86/AO1

9. Voluntary contributions received from Norway and Sweden in early 1986 made it possible for UNCTAD to launch its technical assistance programme on restrictive business practices with a first regional seminar for African countries in Nairobi, Kenya. Other contributions to the Trust Fund from France and again from Norway and Sweden, made it possible to hold seminars in Asia (Bangkok, Thailand in 1987), French-speaking Africa (Douala, Cameroon in 1989) and Latin America (Caracas, Venezuela in 1990). Details concerning the financial implications of these seminars are given in the annex to this report.

10. The objectives of these regional seminars were, in particular,

(a) To reinforce the capability of the countries of each region in identifying and assessing the extent to which particular restrictive business practices, as defined in the Set of Principles and Rules, affect their trade and development;

(b) To strengthen these countries' capability to adopt and effectively enforce appropriate legislation and to implement procedures for the control of such practices, including the setting up of a restrictive business practices authority; and,

(c) To enhance the technical expertise of government officials in the ways and means of taking remedial action against restrictive business practices adversely affecting the trade and economic development of their countries.

11. Among the main issues dealt with during these seminars were presentations on the main restrictive business practices adversely affecting international trade, particularly the trade and development of developing countries of the region; efforts at the national and international levels to control such practices, and in that context the Set of Principles and Rules; the need for RBP control legislation and for ways and means to achieve effective control of such practices; the role of RBP control within the context of overall industrialization and economic policies; the relationship between price regulations, price controls and RBP control; the relationship between RBP control and consumer protection, RBP control and international trade; evaluation of the seminar and the identification of needs for further technical assistance and advisory services in the region.

1. The First African regional seminar on RBPs (Nairobi, Kenya - 12-16 May 1986)

12. This Seminar, which was held at the United Nations Environment Programme (UNEP) headquarters at the Gigiri Centre in Nairobi, was attended by participants from Botswana, Egypt, Ethiopia, Gambia, Ghana, Kenya, Lesotho, Liberia, Somalia, Swaziland, the United Republic of

Tanzania, Zambia and Zimbab
Germany, Norway and Sweden,

13. From the conclusions whic
dynamic in relation to industri
through research and advisory
country's overall economic deve
tem, its level of development, t
vantages that might be profitabl

14. Similarly, with the process
the application of restrictive bus
regional levels.

15. It was also felt that RBP
used as such in less developed, s
should be tailor-made and adapt
apply only certain sections of
collusive tendering, refusals to d

16. Considerable further actio
effects of RBPs, and to advise t
countries were also anxious to o
of RBPs encountered in the daily
countries and notified to UNCT

17. Finally, it was suggested t
with the Economic Commission
training seminars. Moreover, it
Organization of African States (

we. Lecturers included experts from the Federal Republic of
in addition to the UNCTAD staff members.

h emerged from the Seminar, it became clear that RBP policy was
development. There was a need to study this aspect further,
missions, in order to evaluate the role of RBP policy within a
lopment policy, taking into account its economic and social sys-
e size of its domestic market and the potential comparative ad-
developed.

of relaxation of price regulations and price controls, the role of
ness practices control policy needs further study at national and

ontrol legislation, as applied in developed countries could not be
nall, low-income markets of African countries, and that such laws
d to the local necessities. For example, it might be necessary to
comprehensive RBP control laws, such as those dealing with
al and resale price maintenance.

was needed in order to sensitize African countries to the adverse
eir authorities in the drafting of tailor-made legislation. African
ain information concerning RBPs and it was stressed that cases
work of government officials should be exchanged among African
AD in order to improve its dissemination.

hat joint activities should be undertaken by UNCTAD together
for Africa, in particular with respect to technical assistance and
was suggested that RBPs should be placed on the agenda of the
AU).

2. The Asian Regional Seminar on RBPs (Bangkok, Thailand - 28 September-2 October 1987)

18. This Seminar was held at the headquarters of the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP). It was attended by participants from 15 Asian developing countries: Bangladesh, Brunei Darussalam, China, Democratic People's Republic of Korea, Fiji, India, Islamic Republic of Iran, Myanmar, Nepal, Papua New Guinea, Philippines, Republic of Korea, Sri Lanka and Thailand. Lectures and statements were delivered by experts from the Federal Republic of Germany, Japan, Norway and Sweden, and representatives of ESCAP and the ESCAP/UNCTC Joint Unit on Transnational Corporations, as well as UNCTAD officials.

19. Some participants, who had already expertise in the field of RBP control, felt that the scope of this Seminar was too wide and laid too much emphasis on questions of the definition of RBPs of which they were already aware. They noted that further seminars on specific RBP issues were necessary, in particular with respect to methods of detecting and taking effective action against particular RBPs. Other participants noted that the Seminar had enlightened them in clarifying certain practices which they were encountering in their daily work but which they had not identified before as being restrictive business practices, and had not known how to deal with. They suggested that further technical assistance in the form of national seminars or advisory missions to their countries would be extremely useful if one wished to maximize the impact of this first regional Seminar on RBP issues.

3. Second African Regional Seminar on RBPs (Douala, Cameroon - 27 November-1 December 1989)

20. In 1989, the Government of France made a contribution to the UNCTAD Restrictive Business Practices Trust Fund which enabled the UNCTAD secretariat, together with the Government of France, to organize a seminar on restrictive business practices for French-speaking African countries. The Seminar was attended by participants from 23 countries: Angola, Benin, Burkina Faso, Burundi, Cape Verde, Central African Republic, Chad, Comoros, Congo, Côte d'Ivoire, Djibouti, Guinea, Equatorial Guinea, Madagascar, Mali, Morocco, Niger, Rwanda, Sao Tome and Principe, Senegal, Togo, Tunisia and Zaïre. Experts from France, Spain and representatives from the European Economic Commission, the World Bank and UNCTAD addressed the Seminar.

21. The debates that followed the presentations mainly reflected the concerns in African countries having to apply structural adjustment programmes and economic liberalization policies. Participants questioned the ability of small African markets to sustain competition from well-trained, large foreign multinational firms benefiting from economies of scale in world markets. The need for an appropriate framework for these economies was stressed, if they were to avoid being wiped out altogether by fierce foreign competition. In this respect, an appropriate competition policy was needed to ensure that indigenous enterprises could compete with foreign ones, without their being subject to anti-competitive practices.

22. In addition, along with the reduction of State control over industries and prices, it was necessary for RBP control legislation to ensure that inefficient State monopolies were not rapidly replaced by private monopolies abusing their market-dominant position in order to fix excessive prices. Deregulation of price controls and the elimination of subsidies for essential goods had to be closely scrutinized by an RBP control authority in order to ensure that price formation resulted from the free play of competition. Thus the imperative need for RBP control legislation in these countries. In this respect, the suggestion was made that RBP control legislation be adopted on a regional or sub-regional basis, in much the same way as within the European Community which enabled member countries to control more effectively the restrictive business practices of, for example, transnational firms allocating markets through RBPs such as refusals to deal and export prohibitions.

4. The Latin American Regional Seminar on RBPs (Caracas, Venezuela - 24-28 September 1990)

23. Further contributions from Norway and Sweden to the Trust Fund has enabled UNCTAD to organize, in co-operation with the Latin American Economic System (SELA), a seminar for Latin American countries at the SELA headquarters in Caracas.

24. Participants from Argentina, Brazil, Bolivia, Chile, Colombia, Costa Rica, Cuba, Ecuador, Dominican Republic, El Salvador, Guatemala, Guyana, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Trinidad and Tobago and Uruguay have been invited to attend. Experts from the Federal Republic of Germany, Norway, Sweden and the United States will address the Seminar, as well as representatives from SELA, the UNCTC and UNCTAD.

B. Federal Republic of Germany Seminars in co-operation with UNCTAD

25. The Federal Republic of Germany has organized, in co-operation with UNCTAD, a number of RBP seminars for developing countries, with the financial and logistic support of the German Foundation for International Development (DSE).

1. The International Round Table on Competition Policy (Berlin (West) - 30 September-3 October 1986)

26. The Round Table was organized by DSE and the Federal Cartel Office (FCO) and was attended by high-ranking representatives from Argentina, Brazil, Chile, Costa Rica, Guatemala, India, the Republic of Korea, Mexico, Peru, Philippines, Sri Lanka and Thailand. The former Swedish Ombudsman, as well as officials from the Ministry of Economics and the Federal Ministry of Economic Co-operation and officials from UNCTAD also participated in the Round Table. The main purpose of this meeting was to find out the specific needs of the individual developing countries in the field of RBP-related issues and to see how these needs could best be served through technical assistance.

2. Seminar on Competition Policies and Restrictive Business Practices for Asian Countries (Berlin (West) - 29 October-3 November 1989)

27. This seminar was attended by participants from China, India, Indonesia, Malaysia, Pakistan, Philippines, Sri Lanka and Thailand. Lectures on RBP legislation in the Federal Republic of Germany and Sweden were given by officials from the Federal Ministry of Economics and the Federal Cartel Office, and the former Swedish Ombudsman, respectively. The representative of UNCTAD described measures at international level to control RBPs and presented the Set of Principles and Rules in detail. Very intensive exchanges of views were held concerning the application of RBP legislation and the powers of the RBP control authorities to implement the law.

3. Seminar on RBPs for Andean Group member countries (Lima, Peru - 17-21 September 1990)

28. The Federal Republic of Germany, in co-operation with UNCTAD, is organizing a seminar for the member countries of the Cartagena Agreement, at the Andean Group (JUNAC) headquarters in Lima, Peru.

C. Contributions under Section 24 of the United Nations Programme Budget

29. The USSR contribution to Section 24 of the United Nations Regular Programme of Technical Co-operation, includes the convening in Moscow of a Regional Training Seminar on RBPs for Asian countries, which will be held on 29 October-2 November 1990.[3] The Moscow Seminar will bring together experts on competition from developed market-economy countries with participants from developing countries from Asian and East-European countries in order to sensitize the Governments of participating countries of the need to set up the necessary frameworks to maximize the benefits from competition which should result from trade liberalization and to train partic-

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3 Dates to be confirmed.

ipants on the methods of detecting and effectively dealing with RBPs.

D. Participation in project RAS/86/020/I/01/40

30. Under project RAS/86/020/I/01/40 - Assistance for international negotiations, which deals with the ongoing Uruguay Round of negotiations - a component on services and corporate policies has been added. The component on "corporate policies" includes, *inter alia*, a review of trade-related investment measures (TRIMS) in Asia and the Pacific, as well as corporate behaviour including restrictive business practices. Under this project a number of consultant studies have been launched in the Asia and Pacific region, and on the basis of these studies training material on corporate policies, including RBPs, will be prepared and tested at a workshop which is scheduled to take place in Asia in early 1991.

E. Other technical assistance activities

1. Technical assistance and advisory mission to China (1-12 April 1990)

31. Under UNCTAD's regular budget, an advisory mission to China was organized to provide assistance in relation to the preparation of RBP control legislation in China. Given the in-depth expertise required for this type of project, an expert from the Federal Cartel Office of the Federal Republic of Germany was invited to participate in this mission, along with the representative of UNCTAD. The mission has led to further requests from the Chinese authorities which so far have not been attended to for lack of the necessary financial resources. As RBP legislation has now been drafted, the Chinese authorities would like (1) expert analysis and discussion of the Bill; (2) the organization of an official tour for Chinese RBP control officials to visit RBP control authorities in developed countries; (3) the training of officials in the RBP control authorities; and (4) the organization of training seminars in China.

2. OECD Symposium on Competition and Economic Development (Paris, France - 17-18 October 1989)

32. This two-day meeting brought together high-ranking officials of RBP control authorities in OECD countries with high-ranking officials and representatives from a number of developing countries (Chile, Republic of Korea, Côte d'Ivoire, India, Kenya, Malaysia, Morocco, Mexico, Thailand) as well as Poland and Hungary. Also present were representatives from the European Communities, the Andean Pact, GATT, WIPO, the World Bank and UNCTAD.

3. Seminar on Competition Policy Enforcement under the Restrictive Trade Practices, Monopolies and Price Control Act, 1988, of Kenya (Nairobi - 15-19 January 1990)

33. The OECD and UNCTAD jointly organized a national Training Seminar on Competition Policy Enforcement for Kenya. Experts from Canada, Norway, the United Kingdom, the United States and the European Communities participated in the Seminar. The objective was two-fold: first, to make a general presentation of Kenya's new RBP control legislation to the Kenyan au-

thorities and, second, to provide a training opportunity to the officials responsible for the enforcement of the new law.

4. Technical assistance activities directly organized by individual States

34. In addition to the technical assistance, advisory and training programmes described above, States have organized numerous events, both bilaterally and regionally, which are briefly described below, as they were reported to UNCTAD.

Actions reported during the period 1984-1985

(a) Australia

35. The Trade Practices Commission hosted the second Conference on Antitrust Law and Administration in Asian and Oceanian Countries. The Conference was held in Canberra on 23 and 24 May 1984. Representatives from India, Indonesia, Japan, the Republic of Korea, New Zealand and Thailand attended. Observers from China were also present. (The first conference was held in Tokyo, Japan, in November 1979 with the broad objective being to promote co-operation and information exchange in the region on antitrust matters.) The theme of the second conference was "Antitrust law and administration in Asian and Oceanian countries - objectives and results". At the conference, representatives from the participating countries were involved in discussions on this theme as it related to their country. During the concluding session of the conference there was an initial discussion on the means for further co-operation within the region.

(b) Japan

36. The Government of Japan held an exchange of views with the competent authorities of the Republic of Korea in December 1983, and of Thailand in May 1984. The Government of Japan, at the request of the Government of the Republic of Korea, accepted three trainees for the course on the implementation of the antitrust law in September 1983. In addition, a Japanese delegation visited China during September 1984 and an agreement was reached to provide technical assistance to China on competition law and enforcement.

(c) United Kingdom of Great Britain and Northern Ireland

37. In October 1983, officials from the Republic of Korea visited the Office of Fair Trading, the Monopolies and Mergers Commission and the Department of Trade and Industry for discussions about the United Kingdom's competition policy and practice. The Director of Investigation in the Indian Monopolies and Restricted Trade Practices Commission visited the United Kingdom in May 1984 for a similar purpose. A visit was also received during that year from the Australian Competition Authority. Finally, there were exchanges of personnel for a number of weeks with the Federal Cartel Office in the Federal Republic of Germany and with the Federal Trade Commission in the United States of America.

(d) United States of America

38. During the period 1 October 1983 through 30 September 1984 Department of Justice experts consulted with officials of several developing countries concerning their plans for considering, adopting, or implementing new competition legislation or administrative measures. Department of Justice personnel also met in Washington with competition officials, scholars, legislators, private

attorneys, cabinet officers and other ranking officials, economists, trade union officials, and business representatives from a dozen developed and developing countries. Subjects of discussion included assistance in investigations being conducted by foreign competition authorities, joint research and development, proposed United States competition legislation, bid-rigging, United States consent decree procedures for terminating merger cases, resale price maintenance, deregulation of the transportation sector, predatory pricing, industrial concentration, and voluntary import restraints.

39. During the same period, the Department received requests for information and assistance from competition authorities in nine countries. The Department provided the requesting authorities with information concerning its activities or views in such diverse areas as competition in the shipping, steel, beer, and perfume industries, merger policy, United States small business legislation, newspaper advertising, United States pre-merger rules, conflicts of interest and consent decrees in distribution and trademark cases.

40. Also in May 1984, a delegation of Antitrust Division and Federal Trade Commission officials met with competition officials from the Republic of Korea. Although competition officials from the Republic of Korea had visited United States antitrust officials in Washington informally on a few previous occasions, this visit marked the first formal antitrust consultations between the two countries. The two sides exchanged information and views on a range of competition issues, including recent competition legislation in the Republic of Korea. The consultation was initiated as a result of discussions between the delegation of the United States and the delegation of the Republic of Korea during the 1983 meeting of the Intergovernmental Group of Experts on Restrictive Business Practices.

41. Consultations on United States antitrust legislation and its administration has taken place with a number of authorities from both developed and developing countries which had accepted an invitation, originating at the second session of the Intergovernmental Group. A course in competition policy and law enforcement was planned for 1985, and countries participating in the Intergovernmental Group of Experts on Restrictive Business Practices were invited to indicate their interest in participating.

Actions reported during 1986

(a) France

42. Some competition training courses were organized by the Direction Générale de la Concurrence, de la Consommation et de la Répression des Fraudes (Directorate-General of Competition, Consumption and the Prevention of Fraud), for the benefit of foreign officials of the following countries: Chad, Gabon, Côte d'Ivoire, Mali, Morocco, Niger and Poland. The courses were financed by the International Students and Trainees Centre (CIES), a unit of the Ministry of Foreign Affairs, the organization that managed the scholarships awarded to foreign students and trainees by the Government of France under the programme of technical and cultural cooperation. The short courses dealt with the study of French and Community competition law (individual restrictive practices, collective restrictive practices and legislation concerning concentration). Lessons and lectures were organized combined with practical work with case analyses. Meetings with and visits to Departmental or Regional Directorates or to the National Directorate of Surveys, also formed part of the course.

43. In the case of the long instruction periods (one year), the foreign trainees followed the entire course of study at the National Competition School of the trainee commissioners recruited by competitive examination. That course was centred on both an in-depth theoretical approach and the practical handling of files through, *inter alia*, periods of practical experience with the Regional and Departmental Directorates of Competition.

(b) Federal Republic of Germany

44. As in previous years, the national competition authorities (in line with Section F.6 of the Set) again discussed problems of mutual interest in a number of cases with representatives of other national competition authorities, including developing countries, and exchanged relevant information. The exchange of staff between the national competition authorities was also continued in 1985 and 1986.

(c) Japan

45. The Information Centre on Antimonopoly Policy established at the Fair Trade Commission of Japan, continued to collect relevant information on anti-trust policies among Asian and Oceanian countries, to contribute to the development of competition policies among these countries and distribute it to the countries concerned. The Government of Japan held an exchange of views on competition policy with the Peoples' Republic of China in October 1984.

46. The Government of Japan also held exchanges of views on competition policy at the official level with the Republic of Korea in February and June 1985 and in July 1986.

(d) Sweden

47. The Government of Sweden gave a three-week training course in early 1986 at the Swedish Competition Ombudsman's Office in Stockholm, which was attended by participants from China, Cuba, Pakistan and Sri Lanka.

(e) United Kingdom of Great Britain and Northern Ireland

48. A number of exchanges of personnel were arranged and facilitated between the United Kingdom competition authorities and the restrictive business practices authorities of other countries. Notably, training programmes were arranged in the context of visits to the United Kingdom in December 1985 of the Director of Prices Control and Consumer Protection at the Ministry of Commerce and Industry of Cyprus, and in March 1986 of the Secretary-General of the National Prices Commission of Sri Lanka.

Actions reported in 1987

(a) Australia

49. Australian competition authorities continued to co-operate with authorities from other countries to strengthen the control of RBPs. A senior officer of the Australian Trade Practices Commission visited the Republic of Korea in September 1986 to discuss the general features of the country's antitrust system with officials from the Korean Economic Planning Board. In late 1986, two senior antitrust officials from the United States visited Australia to discuss the operation of the United States - Australian Antitrust Co-operation Agreement and developments in antitrust law in general. In early 1987, there began an exchange for 12 months of senior personnel between the competition authorites of Australia and Canada. Finally, there were continuing exchanges of information, notifications and other contacts with foreign competition authorities relating to the control of various restrictive business practices with international dimensions.

(b) France

50. As in previous years, training programmes of various lengths in the field of competition law were organized by the Direction Générale de la Concurrence, de la Consommation et de la Répression des Fraudes, for more than 40 foreign officials. In addition, courses, seminars and workshops had also been organized. The medium- and long-term training programmes were financed by the International Centre for Students and Trainees, which was a focal point of the Ministry of Foreign Affairs. The Centre awarded scholarships to foreign students and trainees under the French Government's technical and cultural co-operation scheme.

(c) Federal Republic of Germany

51. A number of delegations from developed and developing countries visited both the Federal Ministry of Economics and the Federal Cartel Office to obtain information on the entire range of RBP-related issues. In the first six months of 1987, the FCO alone hosted delegations from Japan, the People's Republic of China, El Salvador, various South-East Asian countries, and Sweden. The FCO held its Third International Cartel Conference in Berlin (West) on 30 June and 1 July 1986. Participants from 18 countries discussed questions of size of enterprises and international competitiveness. Also, as in earlier reporting periods, the FCO hosted a number of foreign delegations interested in gathering information about RBP-related issues. While most of the delegations came from OECD Member States, the FCO also received delegations from countries such as Argentina and Zimbabwe. The exchange of officials with other OECD competition authorities also continued in the period under report.

(d) Japan

52. The Fair Trade Commission of Japan held exchanges of views on competition policy with three delegations from the People's Republic of China in March and May 1987.

(e) United Kingdom of Great Britain and Northern Ireland

53. In the context of Section F.6 of the Set of Principles and Rules, a number of exchanges of personnel were arranged and facilitated between the United Kingdom competent authorities and the restrictive business practices authorities of other countries.

(f) United States of America

54. During the period 1 January through 31 December 1986, Department and Commission competition personnel met in Washington with cabinet ministers, competition and other government officials, legislators, scholars, private attorneys, economists, business representatives and researchers from a dozen developed and developing countries. Subjects of discussion included vertical restraints, competition in international air passenger transportation, United States merger policy, proposed United States antitrust legislation, import distribution arrangements, intellectual property, technology transfers to developing countries, deregulation in the telecommunications industry, gray market an parallel imports, and trends in enforcement policy and procedures.

55. During the year, the United States provided notification and information to foreign competition authorities on many occasions, and engaged in consultations in several instances in regard to pending competition matters. The United States responded to a large number of official requests for information from foreign authorities during the period on such disparate subjects as wine, tractors, earth moving equipment, automobile parts, rubber and plastic products, engine components, transportation equipment, entertainment, tobacco products, medical supplies, financial services, telecommunication equipment, semiconductors, market access by foreign competitors, international product distribution systems, advertising restraints and export trade associations.

Actions reported in the period 1988-1990

(a) Australia

56. In 1988, Morocco sought and obtained information about the development of restrictive business practices laws in the Pacific region. Detailed information on Australian Competition Law was also provided, together with an offer to provide further assistance as required.

(b) France

57. In 1988, training courses on competition laws of various lengths were organized by the Direction Générale de la Concurrence, de la Consommation et de la Répression des Fraudes, for the benefit of over 20 foreign officials. In 1987, for instance, training was provided to officials from Burkina Faso, Chad, China, Gabon, Morocco and Tunisia. The Government's contribution for these various training courses in 1988 amounted to about 400,000 francs, in addition to the implicit cost of providing training staff.

(c) Federal Republic of Germany

58. The Federal Cartel Office (FCO) hosted a larged number of Government officials, RBP law experts and private researchers from developed as well as from developing countries. Visitors came from El Salvador, Ireland, Norway, the Philippines, the United Kingdom, the United States and Venezuela. Furthermore, the FCO hosted delegations from Japan and China.

59. At the end of June 1988, the FCO organized its Fourth International Cartel Conference, which was attended by restrictive business practices experts from 22 countries. The topic of the conference was "National competition laws and internationalization of markets". It was the first conference to be attended by officials from non-OECD member countries, like the Republic of Korea, Sri Lanka and the People's Republic of China. Also, the Federal Cartel Office during the period under report hosted various government officials and restrictive business practices experts from developed as well as from developing countries. Longer-term trainee programmes organized at the FCO for officials from Norway and the People's Republic of China also took place.

60. On 17-20 June 1990 the Federal Cartel Office organized its Fifth International Cartel Conference, which was attended by RBP experts from more than 30 countries, including China, Kenya, Republic of Korea, Sri Lanka and a representative from the Andean group (Acuerdo de Cartagena). The Conference theme this year was "International Instruments to Control Restraints of Competition after 1992". The Conference was followed by a one-day seminar on "Competition policy issues for the 1990s", organized by the Freie Universität Berlin.

(d) Japan

61. The Fair Trade Commission of Japan had exchanged views on competition policy with the Office of Fair Trade of the Government of the Republic of Korea in March 1988, and with two delegates from the People's Republic of China in June and December 1988. In addition, the FTC organized a training programme for two officers of the Office of Fair Trade of the republic of Korea from 9 May to 3 June 1988.

(e) Republic of Korea

62. Since the beginning of the 1980s, the Republic of Korea had some opportunities to exchange experts in the area of RBPs with other countries, and it had been very useful for them to develop and improve their RBP legislation system. In an effort to strengthen further regional co-operation in the field of RBPs, the Government decided to host the third meeting on Fair Trade Policies among Asian and Oceanian countries, which was held in Seoul from 1 to 3 May 1989.

(f) Pakistan

63. The Government of Pakistan supplied the Ministry of Economic Affairs of Morocco with Pakistan's legislation on RBPs, five of the latest annual reports of the Monopoly Control Authority and other related material.

(g) Sweden

64. The Swedish Ombudsman was invited by representatives from the State and Juridical Institute of the Hungarian Academy of Science, the Institute for Finance Research and the National Board for Material and Prices in Hungary. They discussed Swedish competition legislation and its application. The Competition Ombudsman also received a representative of the Polish Academy of Sciences' Institute of State and Law for holding discussions concerning Swedish competition legislation and the functions of the Swedish Competition Ombudsman.

Chapter III

REQUESTS FOR TECHNICAL ASSISTANCE RECEIVED SO FAR, AND PROPOSALS FOR A FRAMEWORK FOR TECHNICAL ASSISTANCE

65. As can be seen from the description of the activities related above, and particularly from the conclusions of UNCTAD's regional RBP seminars, regional seminars form an indispensable "sensitizing" mechanism for those countries where RBP issues are not clearly discerned. Once the Latin American Regional Seminar on RBPs has taken place, the only region where a regional seminar will not have been implemented under UNCTAD's programmes is Western Asia. It is hoped that in the early 1990s UNCTAD will have received the necessary financial resources to hold such a regional seminar for the countries of Western Asia (Irak, Jordan, Kuwait, Lebanon, Syria, Oman, Dubai, Qatar, United Arab Emirates, Saudi Arabia, Yemen). [4]

A. Requests for action at the national level

66. Once regional and/or sub-regional seminars have been held, the next logical step is to provide technical assistance, advisory and training programmes at the national level, upon request. To date, the UNCTAD secretariat has received requests for technical assistance of one form or another from some 25 countries, including: Brunei Darussalam, Bulgaria, Chile, China, Colombia, Costa Rica, Cuba, Dubai, Ghana, Guinea, Indonesia, Kenya, Madagascar, Mexico, Morocco, Nigeria, Democratic People's Republic of Korea, Oman, Pakistan, Romania, Sri Lanka, Thailand, Trinidad and Tobago, Tunisia and Zambia. Out of these, the UNCTAD secretariat has been able to respond to only three requests so far: (i) Chile (the expenses involved were covered by the requesting country); (ii) China (at that point in time the secretariat was able to make use of available resources in UNCTAD); and (iii) Kenya (a number of countries approached were willing to send experts to a training seminar free of charge).

67. With respect to all the other requests, the secretariat is at present unable to respond favourably for lack of resources. In order to deal effectively with the rapidly mounting requirements - it should be noted that half of the countries listed have requested assistance in the 1989-1990 period and that the pace of individual country requests seems to be accelerating lately - the UNCTAD secretariat needs appropriate resources. The staff of the RBP Unit is already heavily involved in the regular work of preparing studies and reports for the Intergovernmental Group of Experts on Restrictive Business Practices and, exceptionally this year, the Review Conference, in addition to preparation of the Annual Report on Restrictive Business Practices and other regular activities, including on average the organization of one regional seminar a year. The accelerated pace of demands for technical assistance in recent years involves heavy additional work.

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[4] This seminar, along with the other regional RBP seminars, was proposed in the draft project for the establishment within UNCTAD of Technical Assistance, Advisory and Training Programmes on Restrictive Business Practices (TDF 325 RBP) prepared in 1984.

B. Analysis of the needs of individual countries

68. Most requests received follow the same pattern. Developing countries are inevitably at different levels of development. Accordingly, their perception of the issues of competition and the need for RBP control varies. In some countries RBPs are vaguely perceived at the level of imports or direct foreign investment, and some foreign investment codes or technology transfer regulations proscribe certain types of restrictive clauses in licensing or investment contracts. However, the concept of competition policy is often unknown or perceived as an academic theme for developed country universities. In these countries, there is a need for introductive seminars, where experts in the field can explain the issues and convince government authorities that competition policy and market-oriented strategies will lead to accelerated development of their economy, hence the need for the Government to set the appropriate framework for promoting competition: to adopt appropriate RBP legislation and to set up the necessary institutions to monitor application of the law.

69. In other countries where RBP control legislation exists, RBP control authorities have been established and they strongly need to be in contact with their foreign counterparts; they need to exchange information on types of antitrust cases undertaken abroad, on ways and means to detect particular RBPs and, especially, on ways and means to take effective remedial action. This involves organizing extensive training of the officials responsible for RBP control in the developing countries, either through on-the-job training of a specific duration with RBP control authorities abroad, or through training workshops and seminars organized for national officials in their own countries.

70. Another type of assistance which is often needed is that involving the advising of the legislators in charge of drafting appropriate RBP control legislation. Many countries at this stage of preparation require urgent assistance and would benefit considerably from the expertise of countries at a more advanced stage of RBP control.

71. Accordingly, action at the national level is proposed as follows :

(1) Introductory seminars directed at an audience which would include government officials and academics, as well as business and consumer-oriented circles;

(2) Advisory missions and assistance related to the RBP legislation drafting exercise. High-level legal experts from at least two countries with expertise in this area would be necessary. Such missions could be of medium-term duration (one to three months), or involve a certain number of short-term missions;

(3) On-the-job training internships with RBP control authorities in developed countries (as already have been provided from time to time) would need to be organized on a long-term programmed basis. These could be co-ordinated by UNCTAD with willing host countries;

(4) Training workshops and seminars for national officials responsible for implementing RBP control legislation should be organized in the requesting countries. A first example of this is the training seminar which was organized by UNCTAD and the OECD for the Kenyan authorities.[5]

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5 See paragraph 33 above.

C. Proposals for a framework for technical assistance

72. In response to the wide range of needs of the developing countries in the area of RBP control described above, a framework for technical assistance should be organized along the following lines:

(1) An international network of RBP control experts able to participate in technical assistance, advisory and training missions, upon request, should be established on a personal or an RBP authority basis. Depending on their timetables, availability and knowledge of languages, designated experts could be made available upon request. Recently retired former high-level RBP control authority officials willing to take part in such events might be extremely helpful since they would be more readily available. UNCTAD could be designated as the co-ordinating authority between requesting developing countries and expertise-supplying developed country RBP control authorities.

(2) As the co-ordinating agency of technical assistance in the RBP area, UNCTAD should be given the financial resources needed for appropriate and efficient action. This would involve, for example, the utilization of a trust fund - such as that which already exists at present under INT/86/A01 - to be financed by the voluntary contributions of donor countries. At present, financing of this fund is geared exclusively to the holding of specific regional seminars. More flexibility would be needed for the type of expenditure involved in the holding of a series of national seminars, as the expenses involved are more limited - they involve only travel, daily subsistance allowance (DSA) and terminal expenses for a few experts (1-3 per activity) accompanied by one or two UNCTAD representatives. Moreover, whenever possible, experts participating in such activities could have their expenses borne by their own country as a form of financial participation. Another way of economizing time and money would be in the planning of two or three successive country missions at one time, so that with one single round-trip ticket two or more missions could be covered. Flexibility would also involve the possibility of financing on-the-job training programmes at the RBP control authorities of developed countries for officials of developing countries. This would involve only travel, DSA and terminal expenses for those participating in the training programme.

(3) In co-ordinating the programme, UNCTAD should be given the capacity for creating - with the co-operation of RBP control authorities and experts from all over the world - appropriate training materials, including audio-visual facilities, which would be useful for the experts taking part in training activities and also ensure a certain degree of uniformity in the quality and extent of services rendered. An agreed item in the Trust Fund could eventually be devoted to financing such activities.

Annex

Statement of income and expenditure as at 30 June 1990

Training programmes on restrictive business practices

Project Number TX-INT/86/A01

		US dollars	US dollars
	INCOME		
Contributions received from			
	France	79,298.93	
	Norway	42,816.40	
	Sweden	86,160.00	
Interest earned		7,249.57	
	Total		215,524.90
	EXPENDITURE		
16.01	Staff travel	14,423.09	
18.01	Experts/consultants	2,638.87	
32.01	Group training	117,164.53	
53.01	Sundry	500.00	
56.01	Overhead	17,514.44	
	Total		152,240.93
Fund balance at 30 June 1990			63,283.97

Breakdown of expenditure

1986	24,157.63	First African Seminar
1987	46,656.55	Asian Seminar
1988/89	81,436.42	Second African Seminar
1990	(63,283.97 [a])	Latin American Seminar

a Forecast.